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CONSTITUTIONS OF OHIO

1802 AND 1851.

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THE

CONSTITUTION OF OHIO

AND

AMENDMENTS

ADOPTED BY THE CONSTITUTIONAL CONVENTION
OF THE STATE OF OHIO, SEPTEMBER 12, 1802
AND BY THE PEOPLE OF THE STATE OF OHIO,
AT A GENERAL ELECTION, MAY 1, 1803

AS REVISED BY THE CONSTITUTIONAL CONVENTION
OF THE STATE OF OHIO, IN 1850

WILLIAM B. EATON, EDITOR
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1873

THE
CONSTITUTIONS OF OHIO

OF

1802 AND 1851,

WITH

NOTES OF THE DECISIONS CONSTRUING THEM, AND REFERENCES
TO THE CONSTITUTIONAL DEBATES.

BY

GEORGE B. OKEY AND JOHN H. MORTON.



COLUMBUS:
NEVINS AND MYERS, BOOK PRINTERS.
1873.

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P R E F A C E.

This edition of the organic laws of Ohio, the Constitution of 1802 and that of 1851, has been prepared with much labor and pains-taking care. Its preparation was begun nearly three years ago, in anticipation of the Convention now in session, which is called to "revise, alter or amend" the present Constitution; and during the period that has elapsed since the work was undertaken, we have devoted as much time to it as attention to our other duties would permit. We found it necessary, as we proceeded with the work, small as the volume is, to critically examine more than sixty volumes of reports. Our labor has consisted mainly in selecting from the cases decided in the Courts of this State the substance of the decisions, showing the construction which has been placed on the various provisions of both Constitutions, and where pertinent, extracts from the opinions have been made; in appending to each section of the Constitution references to the debates in the Convention of 1850-1; and in adding to the whole thorough analytic indexes. These have been made so full that a person of ordinary intelligence can readily find any provision of either instrument that he may wish to examine, and see also, at the same place, the construction which has been placed upon it by our Courts. Great care has been taken to present the text in as perfect a form as possible, and as to the notes and indexes the same care has been observed.

We are of opinion that an edition in a permanent form, interleaved, would be found useful in the Convention, and that has been a leading object in our present undertaking; and moreover, the State authorities desire a number of bound copies for the use of the State officers and for exchange with other States and Territories. We trust that the whole will be found in such convenient form as to meet the reasonable demands, not only of the members of the Convention, the bar of the State, but of all others who may desire to consult the provisions of our organic laws or study the constitutional history of Ohio.

CINCINNATI, July, 1873.

CONSTITUTION OF OHIO.

ADOPTED, 1802.

We, the people of the eastern division of the territory of the United States, north-west of the river Ohio, having the right of admission into the general government, as a member of the Union, consistent with the constitution of the United States, the ordinance of congress of one thousand seven hundred and eighty-seven, and of the law of congress, entitled "An act to enable the people of the eastern division of the territory of the United States, north-west of the river Ohio, to form a constitution and state government, and for the admission of such state into the Union, on an equal footing with the original states, and for other purposes;" in order to establish justice, promote the welfare and secure the blessings of liberty to ourselves and our posterity, do ordain and establish the following constitution or form of government; and do mutually agree with each other to form ourselves into a free and independent state, by the name of the State of Ohio.

Preamble.

ARTICLE I.

OF THE LEGISLATIVE POWER.

SECTION 1. The legislative authority (1) of this state shall be vested in a GENERAL ASSEMBLY, which shall consist of a senate and house of representatives, both to be elected by the people. (*See Const. 1851, Art. II, § 1.*)

In whom
legislative
power
vested.

(1.) It is the right of the Legislature to enact laws, and the province of the court to construe them. The Legislature has no power to enact a law declaring what construction or decision the court shall make upon acts under which rights and liabilities have already been acquired or incurred. Where the court has put a construction on an act, that construction is binding upon all existing cases. The explanatory act operates prospectively, and has from the time of its passage the force and effect of a law. Where such explanatory act assumes to give construction to existing acts, and to govern the decision of the court as to cases pending, it is judicial; and as the Constitution confers judicial power upon the courts, and withholds it from the Legislature, to that extent such act will be inoperative. As a law, such an act will be enforced; as a construction of previous acts, under which cases are already pending in the courts, it will be held void. *Schooner Aurora Borealis v. Dobbie*, 17 Ohio, 125-127—Read, J.; *Steamboat Messenger v. Pressler*, 13 Ohio St., 255-260.

Divorces are the subject of judicial, not legislative action, and the

Constitution confers upon the Legislature no power to grant them; but to avoid the consequences which would result from declaring all those void which have been granted by the Legislature during the existence of the state, rendering illegitimate the issue of second marriages, the court will pronounce them valid. *Bingham v. Miller*, 17 Ohio, 445.

The Legislature can not disturb existing contracts nor unsettle rights that have already become vested. *Smith v. Parsons*, 1 Ohio, 236; *Bank of Utica v. Card*, 7 Ohio, 2 pt. 170.

The Legislature has a right to change, modify, enlarge or restrain public corporations, which exist only for public purposes, as counties, cities and towns. *Marietta v. Fearing*, 4 Ohio, 427.

A citizen has no vested right in the forms of administering justice that precludes the Legislature from modifying or altering them at its pleasure. *Hays v. Armstrong*, 7 Ohio, 1 pt. 247.

The General Assembly, like the other departments of government, exercises only delegated authority; and any act passed by it, not falling fairly within the scope of "legislative authority," is as clearly void as though expressly prohibited. *C. W. & Z. R. Co. v. Clinton Co.*, 1 Ohio St., 77.

The power of the General Assembly to pass laws cannot be delegated by them to any other body, or to the people. *Ib.*

The act of March 1, 1851, to authorize the commissioners of said county to subscribe to the capital stock of the relator, does not delegate legislative power, or contravene this Constitution, in providing that the subscription shall not be made until the assent of a majority of the electors of the county (except two townships) is first obtained at an election held for that purpose. *Ib.*

It was competent for the Legislature, under this Constitution, to construct works of internal improvement on behalf of the state, or to aid in their construction by subscribing to the capital stock of corporations created for that purpose, and to levy taxes to raise the means; and by an exercise of the same power, to authorize a county to subscribe to a work of that character running through or into such county, and to levy a tax to pay the subscription. Such a tax, when thus authorized, is not beyond the legitimate scope of local municipal taxation: nor is it opposed to Article VIII, Section 4, of this Constitution, declaring that "private property ought and shall ever be held inviolate, but always subservient to the public welfare, provided a compensation in money be made to the owner." The taxing power for such purposes, under this instrument, was an undeniable legislative function, to be exercised at the discretion of the General Assembly, and subject to no limitation but that against poll taxes; and while this Court is unanimous in the opinion that such laws involve a gross abuse of that power, it possesses no authority to control that discretion, or to correct such abuses by the exercise of a veto power on such legislation. *Ib.*

So an act of the General Assembly, authorizing the trustees of a township through which a railroad was to be made, to subscribe on behalf of the township to the capital stock of the railroad company, is not in conflict with this Constitution. *Steubenville and I. R. Co. v. North Tp.*, 1 Ohio St., 105.

The provisions in the charter of the "Lake and Trumbull Plankroad Company," passed February 14, 1849, by which the trustees of certain townships are respectively authorized to subscribe to the capital stock of said company, if a majority of the qualified electors of the townships respectively assent thereto, is not in contravention with this instrument. *Loomis v. Spencer*, 1 Ohio St., 153.

A discriminating assessment for the improvement of streets, laid upon grounds immediately benefited in proportion to such benefit, was a legitimate exercise of the taxing power under this Constitution. *Scovill v. Cleveland*, 1 Ohio St., 126.

The power of taxation being a sovereign power, can only be exercised by the General Assembly, when, and as conferred, by the Constitution; and by municipal corporations only when unequivocally delegated to them by the legislative body. *Mays v. Cincinnati*, 1 Ohio St., 268.

SECTION 2. Within one year after the first meeting of the general assembly, and within every subsequent term of four years, an enumeration of all the white male inhabitants above twenty-one years of age shall be made in such manner as shall be directed by law. The number of representatives shall, at the several periods of making such enumeration, be fixed by the legislature and apportioned among the several counties, according to the number of white male inhabitants above twenty-one years of age in each, and shall never be less than twenty-four, nor greater than thirty-six, until the number of white male inhabitants, above twenty-one years of age, shall be twenty-two thousand; and after that event, at such ratio that the whole number of representatives shall never be less than thirty-six, nor exceed seventy-two. (*See Const. 1851, Art. XI.*)

Census.

Apportionment of representatives.

Number of representatives.

SEC. 3. The representatives shall be chosen annually, by the citizens of each county respectively, on the second Tuesday of October. (*See Const. 1851, Art. II, § 2.*)

When chosen.

SEC. 4. No person shall be a representative, who shall not have attained the age of twenty-five years, and be a citizen of the United States and an inhabitant of this state; shall also have resided within the limits of the county in which he shall be chosen, one year next preceding his election, unless he shall have been absent on the public business of the United States, or of this state, and shall have paid a state or county tax. (*See Const. 1851, Art. II, § 3.*)

Qualifications of representatives.

SEC. 5. The senators shall be chosen biennially, by the qualified voters for representatives; and on their being convened in consequence of the first election, they shall be divided by lot, from their respective counties or districts, as near as can be, into two classes: the seats of the senators of the first class shall be vacated at the expiration of the first year, and of the second class at the expiration of the second year; so that one-half thereof, as near as possible, may be annually chosen forever thereafter. (*See Const. 1851, Art. II, § 2.*)

Senators—when and how chosen.

Number of senators, and how apportioned.

SEC. 6. The number of senators shall, at the several periods of making the enumeration before mentioned, be fixed by the legislature, and apportioned among the several counties or districts, to be established by law, according to the number of white male inhabitants of the age of twenty-one years in each, and shall never be less than one-third, nor more than one-half, of the number of representatives.

Qualifications of senators.

SEC. 7. No person shall be a senator who has not arrived at the age of thirty years, and is a citizen of the United States; shall have resided two years in the county or district, immediately preceding the election, unless he shall have been absent on the public business of the United States, or of this state; and shall, moreover, have paid a state or county tax. (*See Const. 1851, Art. II, § 2.*)

Powers of each house.

SEC. 8. The senate and house of representatives, when assembled, shall each choose a speaker and its other officers; be judges of the qualifications and elections of its members, and sit upon its own adjournments; two-thirds of each house shall constitute a quorum to do business; but a smaller number may adjourn from day to day, and compel the attendance of absent members. (*See Const. 1851, Art. II, §§ 6, 7.*)

Journals and yeas and nays.

SEC. 9. Each house shall keep a journal of its proceedings, and publish them: the yeas and nays of the members, on any question, shall, at the desire of any two of them, be entered on the journals. (*See Const. 1851, Art. II, § 9.*)

This journal, when taken in connection with the laws and resolutions, would seem to be the appropriate evidence of legislative action, and the journal cannot be contradicted by parol proof. *State v. Moffat*, 5 Ohio, 363.

Right of members to protest.

SEC. 10. Any two members of either house shall have liberty to dissent from, and protest against, any act or resolution which they may think injurious to the public or any individual, and have the reasons of their dissent entered on the journals. (*See Const. 1851, Art. II, § 10.*)

Rules and right of punishment and expulsion.

SEC. 11. Each house may determine the rules of its proceedings, punish its members for disorderly behavior, and, with the concurrence of two-thirds, expel a member, but not a second time for the same cause; and shall have all other powers necessary for a branch of the legislature of a free and independent state. (*See Const. 1851, Art. II, § 8.*)

Vacancies in either house, how filled.

SEC. 12. When vacancies happen in either house, the governor, or the person exercising the power of the governor, shall issue writs of election to fill such vacancies. (*See Const. 1851, Art. II, § 11.*)

The General Assembly has always exercised the power of providing for vacancies that are about to happen during the official term of the members composing its own body. *State v. Choate*, 11 Ohio, 515.

Privilege of members from arrest, & of speech.

SEC. 13. Senators and representatives shall, in all cases, except treason, felony or breach of the peace, be privileged from arrest during the session of the general assembly, and

in going to and returning from the same; (1) and for any speech or debate in either house, they shall not be questioned in any other place. (*See Const. 1851, Art. II, § 12.*)

(1.) The effect of this privilege is, that the arrest of a member is unlawful and a trespass *ab initio*, for which he may maintain an action, or proceed against the aggressor by way of indictment. He may also be discharged by motion to a court of justice, or upon a writ of habeas corpus; and the person arresting him may also be punished as for a contempt. *Story on Cons., § 860, and cases there cited.*

SEC. 14. Each house may punish, by imprisonment, during their session, any person not a member, who shall be guilty of disrespect to the house, by any disorderly or contemptuous behavior in their presence; provided such imprisonment shall not, at any one time, exceed twenty-four hours.

Contempts,
how pun-
ished.

SEC. 15. The doors of each house, and of committees of the whole, shall be kept open, except in such cases as, in the opinion of the house, require secrecy. Neither house shall, without the consent of the other, adjourn for more than two days, nor to any other place than that in which the two houses shall be sitting. (*See Const. 1851, Art. II, § 13, 14.*)

When ses-
sions to be
public and
power of ad-
journment.

SEC. 16. Bills may originate in either house, but may be altered, amended or rejected by the other. (*See Const. 1851, Art. II, § 15.*)

Where bills
to originate.

SEC. 17. Every bill shall be read on three different days in each house, unless, in case of urgency, three-fourths of the house where such bill is so depending, shall deem it expedient to dispense with this rule: and every bill having passed both houses, shall be signed by the speakers of their respective houses. (*See Const. 1851, Art. II, § 16, 17.*)

How often
bill to be
read.
To be signed
by the
speakers.

SEC. 18. The style of the laws of this state shall be: "Be it enacted by the general assembly of the state of Ohio." (*See Const. 1851, Art. II, § 18.*)

Style of
laws.

SEC. 19. The legislature of this state shall not allow the following officers of government greater annual salaries than as follows, until the year one thousand eight hundred and eight, to wit:—The governor, not more than one thousand dollars; the judges of the supreme court, not more than one thousand dollars each; the presidents of the courts of common pleas, not more than eight hundred dollars each; the secretary of state, not more than five hundred dollars; the auditor of public accounts, not more than seven hundred and fifty dollars; the treasurer, not more than four hundred and fifty dollars: no member of the legislature shall receive more than two dollars per day, during his attendance on the legislature, nor more for every twenty-five miles he shall travel in going to, and returning from, the general assembly.

Salaries of
officers.

SEC. 20. No senator or representative shall, during the time for which he shall have been elected, be appointed to any civil office under this state, which shall have been created, or the emoluments of which shall have been increased, during such time. (*See Const. 1851, Art. II, § 19.*)

Exclusion
from office.

Appropriations.

SEC. 21. No money shall be drawn from the treasury, but in consequence of appropriations made by law. (*See Const. 1851, Art. II, § 22.*)

How receipts, &c., to be published.

SEC. 22. An accurate statement of the receipts and expenditures of the public money shall be attached to and published with the laws annually.

Impeachments, how instituted and conducted.

SEC. 23. The house of representatives shall have the sole power of impeaching, but a majority of all the members must concur in an impeachment; all impeachments shall be tried by the senate; and when sitting for that purpose, the senators shall be upon oath or affirmation, to do justice according to law and evidence; no person shall be convicted without the concurrence of two-thirds of all the senators. (*See Const. 1851, Art. II, § 23.*)

Who liable to impeachment and punishment.

SEC. 24. The governor, and all other civil officers under this state, shall be liable to impeachment for any misdemeanor in office; but judgment in such case shall not extend further than removal from office, and disqualification to hold any office of honor, profit or trust, under this state. The party, whether convicted or acquitted, shall, nevertheless, be liable to indictment, trial, judgment and punishment, according to law. (*See Const. 1851, Art. II, § 24.*)

When sessions of the general assembly to be held.

SEC. 25. The first session of the general assembly shall commence on the first Tuesday of March next; and forever after, the general assembly shall meet on the first Monday of December, in every year, and at no other period, unless directed by law, or provided for by this constitution. (*See Const. 1851, Art. II, § 25.*)

Who eligible as candidates or members of the general assembly.

SEC. 26. No judge of any court of law or equity, secretary of state, attorney general, register, clerk of any court of record, sheriff or collector, member of either house of congress, or person holding any office under the authority of the United States, or any lucrative office under the authority of this state, (provided that appointments in the militia or justices of the peace, shall not be considered lucrative offices), shall be eligible as a candidate for, or have a seat in, the general assembly. (*See Const. 1851, Art. II, § 4.*)

Who eligible to other offices.

SEC. 27. No person shall be appointed to any office within any county, who shall not have been a citizen and inhabitant therein, one year next before his appointment, if the county shall have been so long erected, but if the county shall not have been so long erected, then within the limits of the county or counties out of which it shall have been taken.

Public defaulters not eligible as members of the general assembly.

SEC. 28. No person who heretofore hath been, or hereafter may be, a collector or holder of public moneys, shall have a seat in either house of the general assembly, until such person shall have accounted for, and paid into the treasury, all sums for which he may be accountable or liable. (*See Const. 1851, Art. II, § 5.*)

ARTICLE II.

OF THE EXECUTIVE.

SECTION 1. The supreme executive power of this state shall be vested in a governor. (*See Const. 1851, Art. III, § 5; Art. VI, § 2.*)

In whom executive power vested.

SEC. 2. The governor shall be chosen by the electors of the members of the general assembly, on the second Tuesday of October, at the same places, and in the same manner, that they shall respectively vote for members thereof. The returns of every election for governor, shall be sealed up and transmitted to the seat of government, by the returning officers, directed to the speaker of the senate, who shall open and publish them, in the presence of a majority of the members of each house of the general assembly: the person having the highest number of votes shall be governor; but if two or more shall be equal and highest in votes, one of them shall be chosen governor by joint ballot of both houses of the general assembly. Contested elections for governor, shall be determined by both houses of the general assembly, in such manner as shall be prescribed by law. (*See Const. 1851, Art. III, § 1, 3.*)

When governor shall be chosen, and how.

How his election to be contested.

SEC. 3. The first governor shall hold his office until the first Monday of December, one thousand eight hundred and five, and until another governor shall be elected and qualified to office; and forever after, the governor shall hold his office for the term of two years, and until another governor shall be elected and qualified; but he shall not be eligible more than six years, in any term of eight years. He shall be at least thirty years of age, and have been a citizen of the United States twelve years, and an inhabitant of this state four years next preceding his election. (*See Const. 1851, Art. III, § 2.*)

His term of office.

Who eligible and for what periods.

SEC. 4. He shall, from time to time, give to the general assembly information of the state of the government, and recommend to their consideration such measures as he shall deem expedient. (*See Const. 1851, Art. III, § 7.*)

He shall recommend measures, &c.

SEC. 5. He shall have the power to grant reprieves and pardons, after conviction, except in cases of impeachment. (*See Const. 1851, Art. III, § 11.*)

May grant reprieves and pardons.

SEC. 6. The governor shall, at stated times, receive for his services a compensation, which shall neither be increased nor diminished, during the term for which he shall have been elected. (*Const. 1851, Art. III, § 19.*)

His compensation.

SEC. 7. He may require information, in writing, from the officers in the executive department, upon any subject relating to the duties of their respective offices, and shall take care that the laws be faithfully executed. (*See Const. 1851, Art. III, § 6.*)

He may require written information, &c.

SEC. 8. When any officer, the right of whose appointment is, by this constitution, vested in the general assembly, shall, during the recess, die, or his office by any means become vacant, the governor shall have power to fill such

What vacancies the governor to fill.

vacancy, by granting a commission, which shall expire at the end of the next session of the legislature.

A commission is the only evidence of the right to exercise these offices. *State v. Moffat*, 5 Ohio, 358.

A law authorizing the appointment for a period of time beyond the close of the next session of the Legislature would be unconstitutional. *Ib.*

When and how he may convene the general assembly.

Commander-in-chief of militia.

When he may adjourn the assembly.

Who shall fill his place when vacancy occurs.

Who ineligible.

Seal of state, and by whom kept.

How grants and commissions issued.

Secretary of state, how appointed—term of office and duties.

SEC. 9. He may, on extraordinary occasions, convene the general assembly, by proclamation, and shall state to them, when assembled, the purposes for which they shall have been convened. (*See Const. 1851, Art. III, § 8.*)

SEC. 10. He shall be commander-in-chief of the army and navy of this state, and of the militia, except when they shall be called into the service of the United States. (*See Const. 1851, Art. III, § 10.*)

SEC. 11. In case of disagreement between the two houses, with respect to the time of adjournment, the governor shall have the power to adjourn the general assembly to such time as he thinks proper; provided it be not a period beyond the annual meeting of the legislature. (*See Const. 1851, Art. III, § 9.*)

SEC. 12. In case of the death, impeachment, resignation or removal of the governor from office, the speaker of the senate shall exercise the office of governor, until he be acquitted or another governor shall be duly qualified. In case of the impeachment of the speaker of the senate, or his death, removal from office, resignation or absence from the state, the speaker of the house of representatives shall succeed to the office, and exercise the duties thereof, until a governor shall be elected and qualified. (*Const. 1851, Art. III, § 15, 17.*)

SEC. 13. No member of congress, or person holding any office under the United States, or this state, shall execute the office of governor. (*Const. 1851, Art. III, § 14.*)

SEC. 14. There shall be a seal of this state, which shall be kept by the governor, and used by him officially, and shall be called "THE GREAT SEAL OF THE STATE OF OHIO." (*See Const. 1851, Art. III, § 12.*)

SEC. 15. All grants and commissions shall be in the name, and by the authority of the state of Ohio, sealed with the seal, signed by the governor, and countersigned by the secretary. (*See Const. 1851, Art. III, § 13.*)

SECRETARY OF STATE.

SEC. 16. A secretary of state shall be appointed (1) by a joint ballot of the senate and house of representatives, who shall continue in office three years, if he shall so long behave himself well: he shall keep a fair register of all the official acts and proceedings of the governor; and shall, when required, lay the same, and all papers, minutes and vouchers relative thereto, before either branch of the legislature; and shall perform such other duties as shall be assigned him by law. (*See Const. 1851, Art. III, § 1, 2.*)

(1) The Constitution contemplates two different modes of conferring office. One is by appointment, the other by election. When the office is to be conferred by the people, or by any considerable body of the people, it is spoken of as an *election*. When it is to be conferred by an individual, as by the Governor, or by a select number of individuals, as by a judicial court, or by the General Assembly, it is spoken of as an *appointment*. *State v. McCallister*, 11 Ohio, 46.

ARTICLE III.

OF THE JUDICIARY.

SEC. 1. The judicial power (1) of this state, both as to matters of law and equity, shall be vested in a supreme court, in courts of common pleas for each county, in justices of the peace, and in such other courts as the legislature may, from time to time, establish. (*See Const. 1851, Art. IV, § 1.*)

In whom judicial power vested.

(1.) It is the right of the Legislature to enact laws, and the province of the courts to construe them. The Legislature has no power to enact a law, declaring what construction or decision the court shall make upon acts under which rights and liabilities have already been acquired or incurred. As a law, such an act will be enforced; as a construction of previous acts, under which cases are already pending in the courts, it will be held void. *Schooner Aurora Borealis v. Dobbie*, 17 Ohio, 127.

There may be, and there undoubtedly are, cases where it is proper, nay, where it is the duty of a court to refuse to enforce a statute, on the ground that it is inconsistent with the supreme law of the land. Yet this ought not to be done, unless the statute in question is a plain and palpable violation of the Constitution. It should be both against the letter and spirit of that instrument. So long as there is a doubt, the decision of the court should be in favor of the statute. *McCormick v. Alexander*, 2 Ohio, 75. See *Lewis v. McElvain*, 16 Ohio, 354.

To an argument that a law was in contravention of the spirit of the Constitution, it was said: "This is rather dangerous ground to tread upon in determining the constitutionality of a law. We may all agree as to the reading of the Constitution, and generally as to its meaning; but when we come to talk of its spirit, it is a different matter. There is great danger that we shall conclude that spirit to be in accordance with our preconceived opinions or feelings of what it ought to be." *State v. Cincinnati*, 19 Ohio, 178, 197.

It is the right and duty of the judicial tribunals to determine whether a legislative act, drawn in question in a suit pending before them, is opposed to the Constitution of the United States, or of this state, and if so found, to treat it as a nullity. In such case, the presumption is always in favor of the validity of the law; and it is only when manifest assumption of authority and a clear incompatibility between the constitution and the law appear, that the judicial power will refuse to execute it. *C. W. & Z. R. Co. v. Clinton Co.*, 1 Ohio St., 77; 1 O. S., 105; 1 O. S., 153.

The supreme court.

SEC. 2. The supreme court shall consist of three judges, any two of whom shall be a quorum. They shall have original and appellate jurisdiction, (1) both in common law and chancery, in such cases as shall be directed by law; provided, that nothing herein contained shall prevent the general assembly from adding another judge to the supreme court after the term of five years, in which case the judges may divide the state into two circuits, within which any two of the judges may hold a court. (*See Const. 1851, Art. IV, § 2.*)

(1) Pending a suit in the Common Pleas, the Supreme Court has no constitutional jurisdiction of a motion to dissolve an injunction therein, nor will a special legislative enactment confer jurisdiction upon that court, to prevent the operation of an injunction allowed by the Common Pleas, in a case of which that court has taken jurisdiction. *Griffith v. Crawford Co.*, 20 Ohio, 609.

The common pleas.

SEC. 3. The several courts of common pleas, shall consist of a president and associate judges. The state shall be divided, by law, into three circuits; there shall be appointed in each circuit a president of the courts, who, during his continuance in office, shall reside therein. There shall be appointed in each county, not more than three nor less than two associate judges, who, during their continuance in office, shall reside therein. (1) The president and associate judges, in their respective counties, any three of whom shall be a quorum, shall compose the court of common pleas; which court shall have common law and chancery jurisdiction in all such cases as shall be directed by law; provided, that nothing herein contained shall be construed to prevent the legislature from increasing the number of circuits and presidents, after the term of five years. (*See Const. 1851, Art. IV, § 3, 4, 12.*)

(1) The Legislature may change the boundaries of a county, and when such change places an associate judge within the limits of another county, who does not within a reasonable time remove into the limits of a county for which he was appointed, he forfeits his office. *State v. Choate*, 11 Ohio, 511; *State v. Walker*, 17 Ohio, 135.

Criminal jurisdiction.

SEC. 4. The judges of the supreme court and courts of common pleas, shall have complete criminal jurisdiction in such cases and in such manner, as may be pointed out by law. (*See also Const. 1851, Art. IV, § 4.*)

The Constitution gives the judges of the Supreme Court power to take jurisdiction of such criminal cases as shall be pointed out by law, and to exercise it in such way as the law may point out. *State v. Turner*, Wright's Rep., 32.

SEC. 5. The court of common pleas in each county, shall have jurisdiction of all probate and testamentary matters, (1) granting administration, the appointment of guardians, and such other cases as shall be prescribed by law. (*See Const. 1851, Art IV, § 4, 8.*)

Probate and testamentary.

(1) By this Constitution, exclusive jurisdiction in probate and testamentary matters is vested in the courts of common pleas, and the orders of those courts made in the progress of such matters cannot be reviewed in the Supreme Court upon *certiorari*. *Matter of Gregory*, 19 Ohio, 357. See also *Ewing v. Hollister*, 7 Ohio, 2 pt. 138.

SEC. 6. The judges of the court of common pleas, shall, within their respective counties, have the same powers with the judges of the supreme court, to issue writs of *certiorari* to the justices of the peace, and to cause their proceedings to be brought before them, and the like right and justice to be done. (*See Const. 1851, Art. IV, § 4.*)

Certiorari.

SEC. 7. The judges of the supreme court shall, by virtue of their offices, be conservators of the peace throughout the state. The presidents of the courts of common pleas shall, by virtue of their offices, be conservators of the peace in their respective circuits; and the judges of the court of common pleas shall, by virtue of their offices, be conservators of the peace in their respective counties.

Judges conservators of the peace.

SEC. 8. The judges of the supreme court, the presidents and the associate judges of the courts of the common pleas, shall be appointed (1) by a joint ballot of both houses of the general assembly, and shall hold their offices for the term of seven years, (2) if so long they behave well. The judges of the supreme court, and the presidents of the courts of common pleas shall, at stated times, receive for their services an adequate compensation, to be fixed by law, which shall not be diminished during their continuance in office; but they shall receive no fees or perquisites of office, nor hold any other office of profit or trust under the authority of this state or the United States. (*See Const. 1851, Art. IV, § 12, 14.*)

Judges, how appointed, term of office, and salaries.

1. The Legislature may fill a vacancy that has happened or that is certain to happen before the meeting of the next General Assembly. *State v. Choate*, 11 O., 511.

Although this power of appointment is vested in both houses of the General Assembly, still the Constitution has not prescribed the particular manner in which it shall be exercised, except that it shall be by "joint ballot." This is left to be regulated by the legislative authority, and is regulated by joint rules of the two houses. An individual appointed by "joint ballot" cannot be deprived of the office by mistake of the clerks, for such mistake would be corrected by the bodies by whom they are appointed; nor by neglect of the speakers, nor in any other way except in the mode pointed out in the Constitution. *State v. Moffat*, 5 Ohio, 358.

(2) A law authorizing any other body than the General Assembly to appoint a judge for the term of seven years would be unconstitutional. *State v. Moffat*, 5 Ohio, 358.

Clerks of
courts—
term, &c.

SEC. 9. Each court shall appoint its own clerk for the term of seven years; but no person shall be appointed clerk, except *pro tempore*, who shall not produce to the court, appointing him, a certificate from a majority of the judges of the supreme court, that they judge him to be well qualified to execute the duties of the office of clerk to any court of the same dignity with that for which he offers himself. They shall be removable for breach of good behavior, at any time, by the judges of the respective courts. (*See Const. 1851, Art. IV, § 16.*)

May be
removed.

Terms of
courts.

SEC. 10. The supreme court shall be held once a year in each county, and the courts of common pleas shall be holden in each county, at such times and places as shall be prescribed by law.

The Supreme Court, under this Constitution, could direct a struck jury for the trial of a cause pending before it, in a different county from that in which the order was made. *Seeley v. Blair*, 6 Ohio, 448.

Justices of
the peace.

SEC. 11. A competent number of justices of the peace shall be elected by the qualified electors in each township in the several counties, and shall continue in office three years, whose powers and duties shall, from time to time, be regulated and defined by law. (*See Const. 1851, Art. IV, § 9.*)

Style of pro-
cess—prose-
cutions and
indictments.

SEC. 12. The style of all process shall be, "The State of Ohio;" all prosecutions shall be carried on in the name and by the authority of the State of Ohio; and all indictments shall conclude, "against the peace and dignity of the same." (*See Const. 1851, Art. IV, § 20.*)

ARTICLE IV.

OF ELECTIONS AND ELECTORS.

Who may
vote.

SECTION 1. In all elections, all white male inhabitants above the age of twenty-one years, having resided in the state one year next preceding the election, and who have paid or are charged with a state or county tax, shall enjoy the right of an elector; but no person shall be entitled to vote, except in the county or district in which he shall actually reside at the time of the election. (*See Const. 1851, Art. V, § 1.*)

1. By the proper construction of the term "white male inhabitants," as used in this Constitution, all nearer white than black, or of the grade between the mulatto and white, are entitled to enjoy every political and social privilege of the white citizen. *Jeffries v. Ankeny*, 11 Ohio, 375.

Where the Court of Common Pleas instructed the jury that a man who has any negro blood whatever is not a legal voter, it was held to be error. *Thacker v. Hawk*, 11 Ohio, 376.

Youth of negro, Indian and white blood, but of "more than one-half white blood," are entitled to the benefits of the common school fund. *Lane v. Baker*, 12 Ohio, 237, following *Gray v. State*, 4 Ohio, 353. See also *State v. Cincinnati*, 19 Ohio, 197.

Children of a white mother and a father three-fourths white are white children, within the meaning of the school laws. *Williams v. School District 6*, Wright's Rep., 578.

SEC. 2. All elections shall be by ballot. (*See Const. 1851, Art. V, § 2.*) By ballot.

SEC. 3. Electors shall, in all cases except treason, felony or breach of the peace, be privileged from arrest, during their attendance at elections, and in going to and returning from the same. (*See Const. 1851, Art. V, § 3.*) Voters, when privileged from arrest.

SEC. 4. The legislature shall have full power to exclude from the privilege of electing, or being elected, any person convicted of bribery, perjury, or any other infamous crime. (*See Const. 1851, Art. V, § 4.*) Forfeiture of elective franchise.

SEC. 5. Nothing contained in this article shall be so construed as to prevent white male persons above the age of twenty-one years, who are compelled to labor on the roads of their respective townships or counties, and who have resided one year in the state, from having the right of an elector. (*See Const. 1851, Art. V, § 1.*) Who may vote.

ARTICLE V.

OF THE MILITIA OFFICERS.

(*See Const. 1851, Art. IX.*)

SECTION 1. Captains and subalterns in the militia shall be elected by those persons, in their respective company districts, subject to military duty. How officers elected.

SEC. 2. Majors shall be elected by the captains and subalterns of the battalion. Same subject.

SEC. 3. Colonels shall be elected by the majors, captains and subalterns of the regiment. Same subject.

SEC. 4. Brigadiers general shall be elected by the commissioned officers of their respective brigades. Same subject.

SEC. 5. Majors general and quartermasters general shall be appointed by joint ballot of both houses of the Legislature. Same subject.

SEC. 6. The governor shall appoint the adjutant general. The majors general shall appoint their aids and other division staff officers. The brigadiers general shall appoint their brigade majors and other brigade staff officers. The commanding officers of regiments shall appoint their adjutants, quartermasters and other regimental staff officers; and the captains and subalterns shall appoint their non-commissioned officers and musicians. Same subject.

SEC. 7. The captains and subalterns of the artillery and cavalry, shall be elected by the persons enrolled in their Same subject.

respective corps; and the majors and colonels shall be appointed in such manner as shall be directed by law. The colonels shall appoint their regimental staff; and the captains and subalterns their non-commissioned officers and musicians.

ARTICLE VI.

OF CIVIL OFFICERS.

Sheriff and
coroner.

SEC. 1. There shall be elected (1) in each county, one sheriff and one coroner, by the citizens thereof, who are qualified to vote for members of the assembly; they shall be elected at the time and place of holding elections for members of assembly; they shall continue in office two years, if they shall so long behave well, and until successors be chosen and duly qualified: provided, that no person shall be eligible as sheriff for a longer term than four years in any term of six years. (*Const. 1851, Art. X, § 1-3.*)

(1) Laws requiring these officers to be commissioned, give bond, and take oath of office are not unconstitutional. *State v. Moffat*, 5 Ohio, 358.

State treas-
urer and
auditor.

SEC. 2. The state treasurer and auditor shall be triennially appointed by a joint ballot of both houses of the legislature.

Town and
township
officers.

SEC. 3. All town and township officers shall be chosen annually, by the inhabitants thereof, duly qualified to vote for members of assembly, at such time and place as may be directed by law. (*See Const. 1851, Art. X, § 1.*)

Other
officers.

SEC. 4. The appointment of all civil officers, not otherwise directed by this constitution, shall be made in such manner as may be directed by law.

ARTICLE VII.

OFFICIAL OATHS.

Oath of
officers.

SEC. 1. Every person who shall be chosen or appointed to any office of trust or profit, under the authority of this state, shall, before the entering on the execution thereof, take an oath or affirmation to support the constitution of the United States and of this state, and also an oath of office. (*See Const. 1851, Art. XV, § 7.*)

BRIBERY AT ELECTIONS.

Bribery at
elections.

SEC. 2. Any elector, who shall receive any gift or reward for his vote, in meat, drink, money or otherwise, shall suffer such punishment as the law shall direct; and any person who shall, directly or indirectly, give, promise, or bestow any such reward, to be elected, shall thereby be rendered incapable, for two years, to serve in the office for which he was elected, and be subject to such other punishment as shall be directed by law.

OF NEW COUNTIES.

SEC. 3. No new county (1) shall be established by the general assembly, which shall reduce the county or counties, or either of them, from which it shall be taken, to less contents than four hundred square miles; nor shall any county be laid off, of less contents. Every new county, as to the right of suffrage and representation, shall be considered as a part of the county or counties from which it was taken, until entitled by numbers to the right of representation. (*See Const. 1851, Art. II, § 30.*)

Extent of
new counties
and repre-
sentation
therein.

(1) Where the Legislature has erected a new county out of territory formerly belonging to other counties, and to compensate such counties for the loss of territory occasioned by the erection of a new county, has added territory to them from adjoining counties, it is competent for the Legislature to provide that the county receiving the accession of territory shall pay an equitable proportion of the indebtedness of the county from which such territory has been taken; and the provision of the statute creating the county of Auglaize, which requires Allen county to pay a portion of the debts of Putnam county, is valid. *Putnam Co. v. Allen Co.*, 1 Ohio St., 322.

OF THE SEAT OF GOVERNMENT.

SEC. 4. Chillicothe shall be the seat of government until the year one thousand eight hundred and eight. No money shall be raised until the year one thousand eight hundred and nine, by the legislature of this state, for the purpose of erecting public buildings for the accommodation of the legislature. (*See Const. 1851, Art. XV, § 1.*)

OF AMENDMENTS TO THE CONSTITUTION.

SEC. 5. That after the year one thousand eight hundred and six, whenever two-thirds of the general assembly shall think it necessary to amend or change this constitution, they shall recommend to the electors, at the next election for members to the general assembly, to vote for or against a convention; and if it shall appear that a majority of the citizens of the state, voting for representatives, have voted for a convention, the general assembly shall, at their next session, call a convention, to consist of as many members as there be in the general assembly; to be chosen in the same manner, at the same place, and by the same electors that choose the general assembly; who shall meet within three months after the said election, for the purpose of revising, amending or changing the constitution. But no alteration of this constitution shall ever take place, so as to introduce slavery or involuntary servitude into this state. (*See Const. 1851, Art. XVI, § 2.*)

Of amend-
ments to the
constitution.

BOUNDARIES OF THE STATE.

SEC. 6. That the limits and boundaries of this state be ascertained, it is declared, that they are, as hereafter men-

Boundaries
of the state.

tioned; that is to say: bounded on the east by the Pennsylvania line; on the south by the Ohio river to the mouth of the Great Miami river; on the west by the line drawn due north from the mouth of the Great Miami, aforesaid; and on the north by an east and west line drawn through the southerly extreme of Lake Michigan, running east, after intersecting the due north line aforesaid, from the mouth of the Great Miami until it shall intersect Lake Erie or the territorial line, and thence with the same, through Lake Erie, to the Pennsylvania line aforesaid; provided always, and it is hereby fully understood and declared by this convention, that if the southerly bend or extreme of Lake Michigan should extend so far south, that a line drawn due east from it should not intersect Lake Erie, or if it should intersect the said Lake Erie, east of the mouth of the Miami river of the lake, then and in that case, with the assent of the congress (1) of the United States, the northern boundary of this state shall be established by, and extended to, a direct line running from the southern extremity of Lake Michigan to the most northerly cape of the Miami Bay, after intersecting the due north line from the mouth of the Great Miami river as aforesaid, thence northeast to the territorial line, and, by the said territorial line, to the Pennsylvania line.

(1) In June, 1836, Congress passed an act fixing the northern boundary at a direct line drawn from the southernly extreme of Lake Michigan to the most northernly cape in the Maumee Bay, and thence intersecting the territorial line, and thence with the same to the Pennsylvania line. (*See Const. 1851, Preamble and Note. And see also Daniels v. Stevens, 19 Ohio, 222; Myers v. Manhattan Bank, 20 Ohio, 283.*)

ARTICLE VIII.

BILL OF RIGHTS.

That the general, great and essential principles of liberty and free government may be recognized and forever unalterably established, we declare,

Right to
freedom and
to establish
and alter
government.

SECTION 1. That all men are born equally free and independent, and have certain natural, inherent and unalienable rights; amongst which are the enjoying and defending life and liberty, acquiring, possessing and protecting property, and pursuing and obtaining happiness and safety; and every free republican government, being founded on their sole authority, and organized for the great purpose of protecting their rights and liberties, and securing their independence; to effect these ends, they have at all times a complete power to alter, reform or abolish their government, whenever they may deem it necessary. (*See Const. 1851, Art. I, § 1, 2.*)

Of slavery
and involun-
tary servi-
tude.

SEC. 2. There shall be neither slavery nor involuntary servitude in this state, otherwise than for the punishment of crimes, whereof the party shall have been duly convicted; nor shall any male person, arrived at the age of twenty-one

years, or female person arrived at the age of eighteen years, be held to serve any person as a servant, under the pretense of indenture or otherwise, unless such person shall enter into such indenture while in a state of perfect freedom, and on condition of a *bona fide* consideration received, or to be received, for their service, except as before excepted. Nor shall any indenture of any negro or mulatto, hereafter made and executed out of the state, or if made in the state, where the term of service exceeds one year, be of the least validity, except those given in the case of apprenticeships. (*See Const. 1851, Art. I, § 6.*)

SEC. 3. That all men have a natural and indefeasible right to worship Almighty God, according to the dictates of conscience; that no human authority can, in any case whatever, control or interfere with the rights of conscience; (1) that no man shall be compelled to attend, erect or support any place of worship, or to maintain any ministry, against his consent; and that no preference shall be given, by law, to any religious society or mode of worship, and no religious test shall be required, as a qualification, to any office of trust or profit. But religion, morality and knowledge, being essentially necessary to good government and the happiness of mankind, schools and the means of instruction shall forever be encouraged by legislative provision, not inconsistent with the rights of conscience. (2) (*See Const. 1851, Art. I, § 7.*)

(1) No person can be called in question under our Constitution for his religious belief; but if it be necessary to inquire into the tenets of a body of worshipers to settle a controversy between them about property, that is constitutional. *Kisor v. Stancifer*, Wright's Rep., 323.

Quere.—If inquiring into a man's religious belief, to determine his competency as a witness, is not a violation of the Constitution? *East-day v. Kilborn*, Wright's Rep., 345.

One believing in the existence of God, who sees him in all created nature, and who believes he is as much obliged to tell truth without oath as with, and in future rewards and punishments in this life, and that if he does wrong his conscience will condemn him, is competent. *Ib.*

The prohibition of common labor on the Sabbath, in the act for the prevention of immoral practices, embraces the business of "trading, bartering, selling or buying any goods, wares or merchandise." *Cincinnati v. Rice*, 15 Ohio, 225.

The ordinance of the city of Cincinnati prohibiting such trading, etc., on Sunday, is void as to those who conscientiously do observe the seventh day of the week as the Sabbath. *Ib.*

(2) The whole subject of organizing and regulating schools is left to the General Assembly. But it is insisted that the act of 1849 (2 Curwen, 1469), to authorize the establishment of separate schools for colored children, is in contravention of the spirit of the Constitution. This is dangerous ground to tread upon in determining the constitutionality of a law. We may agree as to the reading of the Constitution, and generally of its meaning; but when we come to talk of its

spirit, it is a different matter. There is danger that we shall conclude the spirit to be in accordance with our preconceived opinions or feelings of what it ought to be. And the court held the act in question to be constitutional. *State v. Cincinnati*, 19 Ohio, 197—Hitchcock, J.

Of the inviolability of private property.

SEC. 4. Private property ought and shall ever be held inviolate, but always subservient to the public welfare, provided a compensation in money be made to the owner. (1) (*See Const. 1851, Art. I, § 19, and note.*)

(1) The power to appropriate property for public uses, for the purpose of promoting the general welfare, is inherent in every government; but this power must be exercised in cases and for objects strictly public; and the Constitution of the United States and of the State of Ohio, in all cases insure that principle of natural justice, which requires compensation to be made to the individual deprived of his property. *Cooper v. Williams*, 4 Ohio, 253, s. c. affirmed 5 Ohio, 391; and see *Le Clerq v. Gallipolis*, 7 Ohio, 1 pt. 217.

Private property may be taken for public use, when provision for the assessment and payment of damages is made, whether the owner is actually paid or not. *Mercer v. McWilliams*, Wright's Rep., 132.

If the right to appropriate private property to the public use depended upon the movement of the owner it would be useless, as, if he chose to sell his property, he could do so without the exercise of the sovereign power. *Ib.*

A canal is such a public work that private property may be taken in constructing it. *Cooper v. Williams*, 4 Ohio, 253; also, *Willyard v. Hamilton*, 7 Ohio, 2 pt. 111; and also in repairing it. *Bates v. Cooper*, 5 Ohio, 115. A toll-bridge authorized by law is such a work also. *Young v. Buckingham*, 5 Ohio, 485. So are public streets. *Hickox v. Cleveland*, 8 Ohio, 543; *Symonds v. Cincinnati*, 14 Ohio, 147; *Brown v. Cincinnati*, 14 Ohio, 541. So are turnpikes. *Kemper v. C. C. & W. Tp. Co.*, 11 Ohio, 393; and railroads. *Moorehead v. L. M. R. Co.*, 17 Ohio, 350.

The authority granted to officers of the State, under the act of 1825, (2 Chase, 1476,) to take private property to aid in the construction and repair of the public works, is constitutional. Nor is it necessary that compensation shall be made to the owner in advance; it is sufficient if provision be made by law for compensating the owner, so that he may have compensation if he desire. *Bates v. Cooper*, 5 Ohio, 115.

Consequential injuries sustained by individuals in the grading and leveling of streets, are not within the protection of this provision. But it is in the power of the Legislature to award compensation to the party injured. *Hickox v. Cleveland*, 8 Ohio, 543.

The State has not the constitutional power to take the property of one and transfer it to another, in compensation for damages sustained in the appropriation of land to public use. Before the owner can, without his consent, be deprived of land for public use, the Legislature must declare by law that the public welfare requires it, directing the mode of ascertaining its value, and provide for its payment. *McArthur v. Kelly*, 5 Ohio, 139; see *Foote v. Cincinnati*, 11 Ohio, 410.

The special act passed by the Legislature January 7, 1813, (Land Laws, 275; 11 O. L. 22,) authorizing a partition and sale of the lands

of Aaron Olmstead, deceased, was constitutional, and the sales made by the trustees named in the act are legal, and a bar to any claim set up by said devisees or any person claiming under them. *Carroll v. Olmstead*, 16 Ohio, 251.

The Legislature has constitutional power to pass a law subjecting a decedent's lands to the payment of his debts. *Ludlow v. Johnson*, 3 Ohio, 553.

The power of the Legislature, under this Constitution, to take from the owner the absolute fee simple of his land, without any other compensation than the benefits to result from the uses for which the land is taken, and then to abandon those uses, and sell the lands, to be held and used by the purchaser as private property, is, to say the least, very questionable. It seems, in effect, to be the taking of private property for private use, without any compensation whatever. *Corwin v. Cowan*, 12 Ohio St., 633.

When private property is appropriated to public uses, it is not unconstitutional, in assessing the damages, to deduct therefrom the benefits conferred upon the owner by the appropriation. *Symonds v. Cincinnati*, 14 Ohio, 147.

Benefits conferred may be set off against the value of property appropriated for public use. *Brown v. Cincinnati*, 14 Ohio, 541.

A tax authorized by the Legislature to construct works of internal improvement on behalf of the state, or to aid in their construction by subscribing to the capital stock of corporations created for that purpose, and to levy taxes to raise the means; and by an exercise of the same power to authorize a county to subscribe to a work of that character running through or into such county, and to levy a tax to pay the subscription, is not beyond the legitimate scope of local, municipal taxation, and was not opposed to this section. *C. W. & Z. R. Co. v. Clinton Co.*, 1 Ohio St., 77.

Private acts of incorporation which confer power to subject private property to public use, should be strictly construed. Upon this principle it was held that a railroad company having once located and constructed its road, could not re-locate it, and for that purpose appropriate private property, although its charter gave it authority to vary the route and change the location after the first selection had been made, whenever a better and cheaper route could be had, or whenever any obstacle to the continuance of the location was found, either by difficulty of construction or procuring right of way at a reasonable cost. *Moorehead v. Little Miami R. Co.*, 17 Ohio, 340.

Subscriptions by municipal corporations to the capital stock of railroad companies are not in contravention of this Constitution. *Loomis v. Spencer*, 1 Ohio St., 153; *The Steubenville and Ind. R. Co. v. Trus. North Tp.*, 1 Ohio St., 105.

The Legislature has no constitutional power to authorize the majority of citizens in a county to vote a subscription of stock to a railroad company that shall be binding on the property of the minority. *Obiter dictum* of Judge Spalding in case of *Griffith v. Crawford Co.*, 20 Ohio, 609.

An incorporated road company, which is authorized by its charter to lay out and construct a turnpike road not exceeding one hundred feet

in width, to erect gates and collect toll, has no right to appropriate for a toll-house land lying without the line of the road. *Kemper v. C. C. & W. Tp. Co.*, 11 Ohio, 392.

Where, under the charter of a turnpike company, damages are assessed for injuries done to the land over which the road passes, the land owner cannot afterward sustain an action against one employed to make the road, for cutting the timber within the lines of the road into cord-wood and selling it. *Prather v. Ellison*, 10 Ohio, 396.

It is no violation of the Constitution for the General Assembly to provide in the charter of a town that the town council may impose the duty of making sidewalks upon the lot owners; and if any one neglect to perform the duty, the council may cause the work to be done for him, and assess the amount expended as tax upon the lot. *Bonsall v. Town of Lebanon*, 19 Ohio, 418.

A discriminating assessment for the improvement of streets laid upon grounds immediately benefited, in proportion to such benefit, was not opposed to this section. *Scovill v. Cleveland*, 1 Ohio St., 126.

Although the interests of riparian proprietors in streams of water be appropriated for the purposes of a canal, yet water cannot be taken from a stream for the purpose of creating hydraulic power to sell or lease on behalf of the state. *Cooper v. Williams*, 5 Ohio, 391; *Buckingham v. Smith*, 10 Ohio, 288.

The Legislature cannot, by declaring a river navigable which is not so in fact, deprive the riparian proprietors of their right to the use of the water for hydraulic and other purposes. *Walker v. Board of Public Works*, 16 Ohio, 540.

A law authorizing private property to be appropriated for public use, without providing compensation to the owner, is void. *Foote v. Cincinnati*, 11 O., 408.

Search warrants and general warrants.

SEC. 5. That the people shall be secure in their persons, houses, papers and possessions, from unwarrantable searches⁽¹⁾ and seizures; and that general warrants, whereby an officer may be commanded to search suspected places, without probable evidence of the fact committed, or to seize any person or persons not named, whose offenses are not particularly described, and without oath or affirmation, are dangerous to liberty, and shall not be granted. (*See Const. 1851, Art. I, § 14.*)

(1) It will not justify searching a man's house that one has been arrested there having in his possession counterfeit money. Existence on the premises of guilty implements, or evidences of crime, will warrant a search, but if not found there, the jurisdiction fails. Circumstances of reasonable suspicion may be proved in mitigation. *Simpson v. McCaffrey*, 13 Ohio, 508.

Of the freedom of speech and the press.

SEC. 6. That the printing presses shall be open and free to every citizen who wishes to examine the proceedings of any branch of government, or the conduct of any public officer; and no law shall ever restrain the right thereof.

Every citizen has an indisputable right to speak, write or print, upon any subject, as he thinks proper, being liable for the abuse of that liberty. In prosecutions for any publication respecting the official conduct of men in a public capacity, or where the matter published is proper for public information, the truth thereof may always be given in evidence; and in all indictments for libels, the jury shall have the right to determine the law and the facts, under the direction of the court, as in other cases. (1) (*See Const. 1851, Art. I, § 11.*)

Of libels.

(1) Under this section the jury in criminal cases are not absolute judges of the law, but only under the direction of the Court, as in other cases. *Montgomery v. State*, 11 Ohio, 424.

SEC. 7. That all courts shall be open, and every person for an injury done him in his lands, goods, person or reputation, shall have remedy by the due course of law, and right and justice administered without denial or delay. (*See Const. 1851, Art. I, § 16.*)

Of redress in courts.

SEC. 8. The right of trial by jury shall be inviolate. (*See Const. 1851, Art. I, § 5.*)

Trial by jury.

The right of the trial by jury was guarded by the ordinance of 1787, but it could never have been intended that, in every possible case, it should be enjoyed. Judicial proceedings, according to the common law, are secured, but this could never have been intended so to restrict the future legislative power of the territory or state that chancery proceedings could not be authorized, or other proceedings necessary to the ends of justice. *Cochran v. Loring*, 17 Ohio, 409, 425.

It was held to be no infringement upon this section for a court of law by adapting the modes of proceeding which belonged to courts of chancery, in execution of the occupying claimant law, as it then existed in this state, to ascertain the value of occupant's improvements, by commissioners instead of a jury. *Hunt v. McMahan*, 5 Ohio, 133.

The value of private property taken for public uses, may rightfully be assessed by commissioners, that not being a case for trial by jury secured in the Constitution, for the reason that it had never been so recognized in England or this country prior to the adoption of that instrument. *Willyard v. Hamilton*, 7 Ohio, 2 pt., 115.

The same doctrine was held in *Cooper v. Williams*, 4 Ohio, 253; *Bates v. Cooper*, 5 Ohio, 118; *Young v. Buckingham*, 5 Ohio, 485. In the latter case, the constitutional validity of assessing by commissioners the value of private property taken for public use was not questioned, although the subject was before the court. Also *Hogg v. Zanesville, C. & M. Co.*, 5 Ohio, 410; *Symonds v. Cincinnati*, 14 Ohio, 147.

There is a total inapplicability of the use of jury trial in a suit for consequential injuries sustained by individuals in the grading and leveling of streets. *Hickox v. Cleveland*, 8 Ohio, 546.

SEC. 9. That no power of suspending laws shall be exercised, unless by the legislature. (*See Const. 1851, Art. I, § 18.*)

Suspension of laws.

Of prisoners
and charges
against
them.

SEC. 10. That no person, arrested or confined in jail, shall be treated with unnecessary rigor, or be put to answer any criminal charge, but by presentment, indictment or impeachment. (1) (*See Const. 1851, Art. I, § 10.*)

(1) It is true, for offenses strictly criminal or infamous, punishment can only be inflicted through the medium of an indictment or presentment of the grand jury. There are, however, many offenses, made so by statute, which are *quasi* criminal, and where the Legislature may direct the mode of redress, untrameled by this constitutional provision. Such is Sabbath-breaking, selling spirituous liquors on Sunday, and disturbance of religious meetings, with many others. There are many offenses, though decidedly immoral and mischievous in their tendencies, that are not crimes, but, at most, only *quasi* criminal. Of such, jurisdiction may be given to a justice of the peace or the mayor of an incorporated town. *Markle v. Town Council of Akron*, 14 Ohio, 589.

Of the trial
of accused
persons and
their rights.

SEC. 11. That in all criminal prosecutions, the accused hath a right to be heard by himself and his counsel; (1) to demand the nature and cause of the accusation against him, and to have a copy thereof; to meet the witnesses face to face; to have compulsory process for obtaining witnesses in his favor; and in prosecutions by indictment or presentment, a speedy public trial, by an impartial jury of the county or district in which the offense shall have been committed; (2) and shall not be compelled to give evidence against himself, nor shall he be twice put in jeopardy for the same offense. (3) (*See Const. 1851, Art. I, § 10.*)

(1) On the trial of an indictment for a criminal offense, and at the return of the verdict it is the right of the accused to be present, and if prevented by imprisonment or other improper means, he is entitled to a new trial. *Rose v. The State*, 20 Ohio, 31.

In criminal cases, the verdict should be received in presence of the prisoner, that he may have the jury polled. *Sargent v. The State*, 11 Ohio, 472.

It is not error to omit giving notice to the prisoner's counsel, that he may be present when the verdict is to be delivered by the jury. *Sutcliffe v. The State*, 18 Ohio, 469.

(1) "It is the right of the accused to have a public trial, that he shall meet the witnesses face to face before the public, and that all that can be said or preferred against him, and that all that can be said or urged in his favor, shall be in the hearing and presence of the public. The witnesses shall give their testimony in public, and the court shall declare the law in public; and the jury are sworn to render their verdict according to the law and the evidence thus publicly given. In no other way can the jury be advised of a fact or principle of law touching the case of the accused. It is his right thus to have every body know for what he is tried and why he is condemned, and to witness

the manner, tone and temper of his prosecution, that he may be subjected to no other influence than truth and law, and that mercy which construes every doubt to his benefit. The court charged with his trial have no right to hold any communication with the jury touching his case, except in the presence of the prisoner, and before the public. The court cannot secretly communicate to the jury what they have said respecting the law of the case. It is the right of the accused to know that the court communicate no new principle of law which had not been before publicly declared, nor is he at all bound to trust to the court or judge in this matter. It is his great privilege, and no power can impair it." *Per Read, J., Kirk v. State*, 14 Ohio, 513.

(3) In a capital case, where the jury state they cannot agree, the court may, in their discretion, discharge them, remand the prisoner for another trial, and continue the case. *Hurley v. The State*, 6 Ohio, 400.

After the jury is impaneled and sworn, if a *nolle prosequi* be entered by the prosecuting attorney, with leave of the court, and without the consent of the prisoner, it is a good bar to another indictment for the same crime. A judgment on the verdict of conviction or acquittal is not necessary in order that either may constitute a bar to another indictment for the same offence. *Mounts v. The State*, 14 Ohio, 295.

After a verdict of guilty and judgment reversed, on account of error in the proceedings, the prisoner is not protected from a second trial before a jury by this provision. This rule goes upon the supposition that the accused never was in jeopardy. *Sutcliffe v. The State*, 18 Ohio, 469.

Upon a plea of *autrefois acquit*, the true test to determine whether the accused has been twice put in jeopardy for the same offense, is, whether the facts alleged in the second indictment, if proven to be true, would have warranted a conviction on the first. *Price v. The State*, 19 Ohio, 423.

SEC. 12. That all persons shall be bailable by sufficient sureties, unless for capital offenses, where the proof is evident or the presumption great; (1) and the privilege of the writ of habeas corpus shall not be suspended, unless, when in case of rebellion or invasion, the public safety may require it. (*See Const. 1851, Art. I, §§ 8, 9.*)

Bailable offenses.

Of the writ of habeas corpus.

(1) The court will not, as a matter of course, admit to bail because the jury in a trial for murder have not agreed upon a verdict. *State v. Summons*, 19 Ohio, 139.

Most undoubtedly the same authority which prescribes the amount of bail, and passes upon the sufficiency of the sureties—which exercises the same power in all analogous cases known to our laws—is to decide whether "the proof be evident or the presumption great." If the evidence exhibited on the hearing of the application be of so weak a character that it would not sustain a verdict of guilty against a motion for a new trial, the court will admit to bail. *Ib.*—Spalding, J.

SEC. 13. Excessive bail shall not be required; excessive fines shall not be imposed; nor cruel and unusual punishments inflicted. (*See Const. 1851, Art. I, § 9.*)

Of bail, fine and imprisonment.

Punishment
to be pro-
portioned to
offense.

SEC. 14. All penalties shall be proportioned to the nature of the offense. No wise legislature will affix the same punishment to the crimes of theft, forgery and the like, which they do to those of murder and treason. When the same undistinguished severity is exerted against all offenses, the people are led to forget the real distinction in the crimes themselves, and to commit the most flagrant, with as little compunction as they do the slightest offenses. For the same reasons, a multitude of sanguinary laws are both impolitic and unjust: the true design of all punishments being to reform, not to exterminate, mankind.

Of insolvent
debtors.

SEC. 15. The person of a debtor, where there is not strong presumption of fraud, shall not be continued in prison, after delivering up his estate for the benefit of his creditor or creditors, in such manner as shall be prescribed by law. (*See Const. 1851, Art. I, § 15.*)

Laws—ex
post facto—
relative to
contracts—
forfeiture of
estate, &c.

SEC. 16. No ex post facto law, (1) nor any law impairing the validity of contracts, shall ever be made; (2) and no conviction shall work corruption of blood, or forfeiture of estate. (3) (*See Const. 1851, Art. II, § 28.*)

(1) Retrospective laws that violated no principle of natural justice, but that, on the contrary, were in furtherance of equity and good morals, were not forbidden by this Constitution. "An act to provide for the settlement of the affairs of the Cuyahoga Falls Real Estate Association," 43 Local Laws, 223, was such a law. *Trus. Cuy. F. R. E. A. v. McCaughy*, 2 Ohio St., 152: approving *Lewis v. McElvain*, 16 Ohio, 347; *Johnson v. Bentley*, 16 Ohio, 97; *Bartholemew v. Bentley*, 1 Ohio St., 37; *Kearny v. Buttes*, 1 Ohio St., 362. And see *Hays v. Armstrong*, 7 Ohio, 1 pt. 248; *Bates v. Lewis*, 3 Ohio St., 459.

A state may regulate contracts, and prescribe their form, effect and mode of discharge, and every contract is supposed to be made with reference to the laws in force. But if an attempt should be made to give such laws a retrospective effect, the constitutional objection would arise in all its force; for the Legislature cannot disturb existing contracts or unsettle rights that have already become vested. *Smith v. Parsons*, 1 Ohio, 236; *Bank of Utica v. Card*, 7 Ohio, 2 pt. 170.

A law which, by relation, retrospectively divests one of his previously existing rights, is unconstitutional. *Steamboat Monarch v. Finley*, 10 Ohio, 384.

The act of 1835 (1 Curwen, 210), relating to defects in appeal bonds, was construed to extend to cases pending at the time of its passage. The provision was a remedial one, calculated to aid in the advancement of justice, and there was no constitutional objection to a construction of the act which would give it a retrospective operation. The appellee has no vested right in the forms of administering justice that precludes the Legislature from modifying them and better adapting them to effect their great ends and objects. The law touches no executed power. It does no more than confer jurisdiction in a case pending and undetermined, where such jurisdiction would otherwise fail. *Hays v. Armstrong*, 7 Ohio, 1 pt. 247.

The second section of the act passed January 29, 1833, amendatory

of the act providing for the acknowledgment of deeds, etc., is constitutional and of binding force, notwithstanding its retrospective operation. *Barton v. Morris*, 15 Ohio, 408.

An assignment to a commissioner of insolvents in Ohio has no retroactive effect, like that to bankrupt commissioners. *Ennis v. Hulse*, Wright's Rep., 259.

An act of the Legislature that divests vested rights and violates contracts, or that assumes to control or to exercise judicial powers, is unconstitutional and void. But the act of March 9, 1835, curing certain defects in the certificate of acknowledgment of deeds (1 Curwen, 240), was not liable to either of these objections, and was a valid law. For a confirmatory act, that merely assumed to cure an informality in the certificate of a magistrate, creating no new title and affecting no right but such as equitably flowed from the grantor—that merely accomplished what upon principles of natural justice a court of chancery ought to decree—may have a retrospective operation when the manifest design of the Legislature was that it should thus operate. *Chestnut v. Shane*, 16 Ohio, 599; overruling *Connell v. Connell*, 6 Ohio, 358; *Good v. Zercher*, 12 Ohio, 364; *Meddock v. Williams*, 12 Ohio, 377; *Silliman v. Cummings*, 13 Ohio, 116.

The third section of the act of March 19, 1850 (2 Curwen, 1578), provides, "that whenever a defendant in any judgment or decree, or the surety or co-sureties of any such defendants, shall by mistake have directed any execution, issued on such judgment or decree, to be levied on any property not liable to such execution, and shall thereby have caused such judgment or decree to be wholly or in part satisfied, and shall have been compelled to pay the owner of such property therefor, he shall, in all actions now pending or hereafter instituted, be adjudged to have the same rights against any co-defendant in such judgment, and against any co-surety or principal in respect of the debt on which such is founded, as though such satisfaction had, by due process of law, been out of the property of such defendant, surety or co-surety so directing said levy: Held, that the statute had not changed the law, but was declaratory of it; and that even if it had effected a change, the law in its application to cases pending at the time of its passage, was not in contravention of the Constitution. *Acheson v. Miller*, 2 Ohio St., 203-207.

2. A law regulating judgments and executions cannot be considered as a law which enters into the nature of contracts, or which the parties have in view when they contract. A law which provided that judgment creditors, who had not sued out and levied execution within one year from the date of judgment, lost their liens as against subsequent judgment creditors, who had not sued out and levied execution within one year, and which applied to judgments rendered as well before as after the enactment of the law, was held not to be unconstitutional as impairing vested rights, or changing the nature of the contract. *McCormick v. Alexander*, 2 Ohio, 65; *Waymire v. Staley*, 3 Ohio, 366. And see *Corwin v. Benham*, 2 Ohio St., 36.

State insolvent laws discharging debtors from the debt upon surrendering up all their property, are constitutional and valid as to contracts

made between citizens of the same state within its jurisdiction, after the law was enacted and in force. *Smith v. Parsons*, 1 Ohio, 236; *Bank of Utica v. Card*, 7 Ohio, pt. 2, 170.

An act abolishing imprisonment for debt, and which operated to discharge a debtor confined on the prison limits before the act took effect, was not a law impairing the obligation of contracts, as it effected the remedy but not the contract. *Parker v. Sterling*, 10 Ohio, 357.

The right to imprison constitutes no part of the contract, and a discharge of a party from imprisonment does not impair the obligation of the contract. *Towsey v. Avery*, 11 Ohio, 93.

The act of the General Assembly of the state exacting toll upon passengers carried by mail stages on the Cumberland road, in Ohio, is constitutional. *State v. Neil*, 7 Ohio, 1 pt., 132. But see same case on error, 3 Howard, Sup. Ct. U. S., 720, where it was held that the act was in violation of the compact between the state and the United States, under which the state took the road, and therefore void.

Where a statute exempted forever certain lands of the Athens University from taxation, and the same lands were afterwards sold by the University, a subsequent statute authorizing a tax to be levied on the lands, is not a violation of that clause of the Constitution of the United States which prohibits a state from passing any law impairing the obligations of contracts. *Armstrong v. Treas. of Athens Co.*, 10 Ohio, 235.

Where the state, by an act incorporating the Ohio University, vested in that institution two townships of land for the support of the University and instruction of youth, and in the same act authorized the University to lease said lands for ninety-nine years, renewable forever, and provided that lands thus to be leased should forever thereafter be exempt from all state taxes, held: That the acceptance of such leases at a fixed rent or rate of purchase by the lessees constitutes a binding contract between the state and the lessees. And a subsequent act of the Legislature levying a state tax on such lands, is a "law impairing the obligation of contracts," within the purview of the tenth section of the first article of the Constitution of the United States, and is, therefore, *pro tanto*, null and void. *Matheny v. Golden*, 5 Ohio St., 361.

In respect to public corporations which exist only for public purposes—as counties, cities and towns—the Legislature, under proper limitations, have a right to change, modify, enlarge or restrain them. *Marietta v. Fearing*, 4 Ohio, 427.

A license to practice a profession is not a contract which confers any vested privileges, but is liable to be modified in any manner which the public welfare may demand. *State v. Gazlay*, 5 Ohio, 22.

The law forfeiting tenants' estate for non-payment of taxes is constitutional. *McMillan v. Robbins*, 5 Ohio, 28.

A subsequent law, which undertakes to make valid a contract wholly void when made, is beyond the limits of just legislation, and in violation of fundamental principles and constitutional rights. *Johnson v. Bentley*, 16 Ohio, 104.

The act of March 5, 1842 (2 Curwen, 880), regulating the mode of collecting debts against turnpike companies, in which the state is a party, is not a law impairing the obligations of a contract, and is therefore constitutional. *State v. Great M. T. Co.*, 14 Ohio, 405.

The provisions of the act of March, 1842, to regulate judicial proceedings where banks and bankers are parties, requiring the sheriff to receive bank-notes in satisfaction of execution in favor of a bank, etc., are not in contravention of this provision of this Constitution. *Bank of Gallipolis v. Domigan*, 12 Ohio, 220.

The 26th section of the act amendatory of the tax law, which taxes rents reserved in leases for a term of fourteen years or upwards, renewable, and chargeable upon real property, which rents are to be assessed to the person entitled to receive the same, as personal property, at a principal sum the interest of which, at the legal rate per annum, shall produce a sum equal to such rents, is constitutional. *Loring v. The State*, 16 Ohio, 590.

In 1845 the Legislature passed a general banking law, the fifty-ninth section of which required the officers to make semi-annual dividends, and the sixtieth required them to set off six per cent. of such dividends for the use of the state, which sum or amount so set off should be in lieu of all taxes to which the company, or the stockholders therein, would otherwise be subject. On March 21, 1851, an act was passed entitled "An act to tax banks, and bank and other stocks, the same as property is now taxable by the laws of this state." The operation of this law being to increase the tax, the question arose whether the latter act, as far as it applied to banks organized under the act of 1845, was an act impairing the obligation of a contract, and in contravention of the tenth section of the first article of the Constitution of the United States. In a series of decisions—*Mechanics' and Traders' Bank v. Debolt*, 1 Ohio St., 591; *Toledo Bank v. Bond*, 1 Ohio St., 622; *Piqua Br. Bank v. Knoup*, 1 Ohio St., 603; *Sandusky City Bank v. Wilbur*, 7 Ohio St., 481; *Skelly v. Jefferson Branch Bank*, 9 Ohio St., 606—it was held by the Supreme Court of the state that an ordinary charter was not a contract. But the Supreme Court of the United States reversed those decisions in the cases of *Piqua Br. Bank v. Knoup*, 16 Howard, 369; *Dodge v. Woolsey*, 18 Howard, 331; *Mechanics' and Traders' Bank v. Debolt*, 18 Howard, 380; *Jefferson Branch Bank v. Skelly*, 1 Black, 436, holding that the charters of the banks were contracts fixing the amount of taxation, and not a law prescribing a rule of taxation until changed by the Legislature. And therefore the act of 1851 was unconstitutional.

(3) The act of 1824 (2 Chase, 1362, § 14), in relation to the forfeiture of estates for the non-payment of taxes, is constitutional. The constitutional provision against the forfeiture of estates has reference only to forfeitures incident to a conviction for crime. Nor is the statute in any sense retrospective. *McMillan v. Robbins*, 5 Ohio, 28.

In England, the conviction of many offenses works "corruption of blood and forfeiture of estate." The forfeiture is to the king. The blood is corrupted. The attainted person can neither inherit from his ancestors, nor can he transmit inheritance. His property is not given to his heirs, but, by the forfeiture, is taken from them. The effects of the crime of the father are thus visited upon his children. It was against such a state of things that the Convention intended to provide. A man sentenced to imprisonment for life in the penitentiary, in pun-

ishment for crime, is not civilly dead, and letters of administration cannot be granted on his estate. *Frazer v. Fulcher*, 17 Ohio, 260.

Transportation for crimes.

SEC. 17. That no person shall be liable to be transported out of this state, for any offense committed within the state. (*See Const. 1851, Art. I, § 12.*)

Of recurrence to the organic law.

SEC. 18. That a frequent recurrence to the fundamental principles of civil government, is absolutely necessary to preserve the blessings of liberty.

Of the right to assemble.

SEC. 19. That the people have a right to assemble together, in a peaceable manner, to consult for their common good, to instruct their representatives, and to apply to the legislature for a redress of grievances. (*See Const. 1851, Art. I, § 3.*)

Of bearing arms; standing armies; subordination of military power.

SEC. 20. That the people have a right to bear arms for the defense of themselves and the state: and as standing armies in time of peace, are dangerous to liberty, they shall not be kept up; and that the military shall be kept under strict subordination to the civil power. (*See Const. 1851, Art. I, § 4.*)

The military in all governments is an arm of the executive department, and not a distinct department. *State v. Coulter*, Wright's Rep., 421.

Where a body of militia performs their evolutions with martial music and firing, so near the court-house as to interrupt or suspend the business of the court, the officers may be proceeded against for a contempt, if they refuse to desist on request. *Ib.*; and *State v. Goff*, Wright's Rep., 78.

Corporal punishment under military rule.

SEC. 21. That no person in this state, except such as are employed in the army or navy of the United State, or militia in actual service, shall be subject to corporal punishment under the military law.

Of quartering troops.

SEC. 22. That no soldier, in time of peace, be quartered in any house without the consent of the owner; nor in time of war, but in the manner prescribed by law. (*See Const. 1851, Art. I, § 13.*)

Of poll tax.

SEC. 23. That the levying taxes by the poll is grievous and oppressive; therefore, the legislature shall never levy a poll tax for county or state purposes. (*See Const. 1851, Art. XII, § 1.*)

¶ A tax assessed upon the members of a profession, upon account of their practice, is constitutional, being not a poll but a faculty tax, and may be legally assessed by the judicial tribunals. *State v. Gazlay*, 5 Ohio, 14; *State v. Hibbard*, 3 Ohio, 63.

A city ordinance requiring a reasonable sum from draymen, by way of excise on their special employment, was held not to be unlawful. *Cincinnati v. Bryson*, 15 Ohio, 625.

So with an ordinance requiring twenty-five cents from persons occupying stalls in the market-place. *Cincinnati v. Buckingham*, 10 Ohio, 257.

SEC. 24. That no hereditary emoluments, privileges or honors, shall ever be granted or conferred by this state. (*See Const. 1851, Art. I, § 17.*)

Hereditary privileges, etc.

SEC. 25. That no law shall be passed to prevent the poor in the several counties and townships within this state from an equal participation in the schools, academies, colleges and universities within this state, which are endowed, in whole or in part, from the revenue arising from donations made by the United States, for the support of schools and colleges; and the doors of the said schools, academies and universities, shall be open for the reception of scholars, students and teachers, of every grade, without any distinction or preference whatever, contrary to the intent for which said donations were made.

Of schools and poor children.

The act of February 20th, 1849 (2 Curwen, 1469), to authorize the establishment of separate schools for the education of colored children, and for other purposes, is constitutional. The whole subject of organizing and regulating schools is very properly left to the General Assembly in the exercise of its legislative powers, and, as a matter of policy, it is unquestionably better that the white and colored youths should be placed in separate schools, and that the school fund should be divided to them in proportion to their numbers. *State v. Cincinnati*, 19 Ohio, 178.

SEC. 26. That laws shall be passed by the legislature, which shall secure to each and every denomination of religious societies, in each surveyed township which now is, or may hereafter be formed in the state, an equal participation, according to their number of adherents, (1) of the profits arising from the land granted by congress, for the support of religion, agreeably to the ordinance or act of congress, making the appropriation.

Disposition of proceeds of sec. 29.

(1) The sect claiming must have formed themselves into a society, and must have given themselves a name. It is not enough that there are individuals who are members of Christian churches residing within the township. A society must be actually formed and known by name. It is not necessary that the individuals should be citizens in order to be *adherents* to a religious society. *State v. Trustees, etc.*, 11 Ohio, 24.

SEC. 27. That every association of persons, when regularly formed, within this state, and having given themselves a name, may, on application to the legislature, be entitled to receive letters of incorporation, to enable them to hold estates, real and personal, for the support of their schools, academies, colleges, universities, and for other purposes.

Incorporation of literary societies.

SEC. 28. To guard against the transgression of the high powers which we have delegated, we declare, that all powers not hereby delegated, remain with the people. (*See Const. 1851, Art. I, § 20.*)

Powers reserved to the people.

SCHEDULE.

Of former
suits and
claims.

SEC. 1. That no evils or inconveniencies may arise, from the change of a territorial government to a permanent state government, it is declared by this convention, that all rights, suits, actions, prosecutions, claims and contracts, both as it respects individuals and bodies corporate, shall continue, as if no change had taken place in this government. (*See Const. 1851, Sched. § 1.*)

Of former
fines and
official
bonds.

SEC. 2. All fines, penalties and forfeitures, due and owing to the territory of the United States, north-west of the river Ohio, shall inure to the use of the state. All bonds executed to the governor, or any other officer in his official capacity, in the territory, shall pass over to the governor or the other officers of the state, and their successors in office, for the use of the state, or by him or them to be respectively assigned over to the use of those concerned, as the case may be.

Of former
officers.

SEC. 3. The governor, secretary and judges, and all other officers under the territorial government, shall continue in the exercise of the duties of their respective departments, until the said officers are superseded under the authority of this constitution. (*See Const. 1851, Sched. § 10.*)

Of prior
laws.

SEC. 4. All laws, and parts of laws, now in force in this territory, not inconsistent with this constitution, shall continue and remain in full effect, until repealed by the legislature, except so much of the act, entitled an "Act regulating the admission and practice of attorneys and counselors at law," and of the act made amendatory thereto, as relates to the term of time which the applicant shall have studied law, his residence within the territory, and the term of time which he shall have practiced as an attorney at law, before he can be admitted to the degree of a counselor at law. (*See Const. 1851, Sched. § 1.*)

Temporary
state seal.
The first
election.

SEC. 5. The governor of the state shall make use of his private seal, until a state seal be procured.

SEC. 6. The president of the convention shall issue writs of election to the sheriffs of the several counties, requiring them to proceed to the election of a governor, members of the general assembly, sheriffs and coroners, at the respective election districts in each county, on the second Tuesday of January next; which elections shall be conducted in the manner prescribed by the existing election laws of this territory: and the members of the general assembly, then elected, shall continue to exercise the duties of their respective offices until the next annual or biennial election thereafter, as prescribed in this constitution, and no longer.

The first ap-
portionment
of represent-
ation.

SEC. 7. Until the first enumeration shall be made, as directed in the second section of the first article of this constitution, the county of Hamilton shall be entitled to four senators and eight representatives; the county of Clermont, one senator and two representatives; the county of Adams, one senator and three representatives; the county of Ross, two senators and four representatives; the county of Fairfield,

one senator and two representatives; the county of Washington, two senators and three representatives; the county of Belmont, one senator and two representatives; the county of Jefferson, two senators and four representatives; and the county of Trumbull, one senator and two representatives.

Done in convention, at Chillicothe, the 29th day of November, in the year of our Lord one thousand eight hundred and two, and of the independence of the United States of America the twenty-seventh.

In testimony whereof, we have hereunto subscribed our names.

EDWARD TIFFIN, *President*,
and Representative from the county of Ross.

JOSEPH DARLINGTON,	}	Adams county.
ISRAEL DONALSON,		
THOMAS KIRKER,		
JAMES CALDWELL,	}	Belmont county.
ELIJAH WOODS,		
PHILIP GATCH,	}	Clermont county.
JAMES SARGENT,		
HENRY ABRAMS,	}	Fairfield county.
EMANUEL CARPENTER,		
JOHN W. BROWNE,	}	Hamilton county.
CHARLES WILLING BYRD,		
FRANCIS DUNLAVY,		
WILLIAM GOFORTH,		
JOHN KITCHEL,		
JEREMIAH MORROW,		
JOHN PAUL,		
JOHN REILY,		
JOHN SMITH,		
JOHN WILSON,	}	Jefferson county.
RUDOLPH BAIR,		
GEORGE HUMPHREY,		
JOHN MILLIGAN,		
NATHAN UPDEGRAFF,		
BAZALEEL WELLS,	}	Ross county.
MICHAEL BALDWIN,		
JAMES GRUBB,		
NATHANIEL MASSIE,		
THOMAS WORTHINGTON,	}	Trumbull county.
DAVID ABBOTT,		
SAMUEL HUNTINGTON,	}	Washington county.
EPHRAIM CUTLER,		
BENJAMIN IVES GILMAN,		
JOHN MCINTYRE,		
RUFUS PUTNAM,		

Attest:

THOMAS SCOTT, *Sec'y.*

CONSTITUTION OF THE STATE OF OHIO.

(ADOPTED A. D. 1851.)

We, the people of the State of Ohio, (1) grateful to Almighty God for our freedom, to secure its blessings and promote our common welfare, do establish this Constitution.

(1) For original boundary lines of Ohio, see act of Congress approved April 30, 1802. 1 Chase, 70.

For a complete history of the question of boundary between Ohio and Michigan, see *Daniels v. Stevens*, 19 Ohio, 239; *Myers v. Manhattan Bank*, 20 Ohio, 283.

In *Booth v. Hubbard*, 8 Ohio St., 243, it was held, that the territorial limits of this State extend on the south-east, at least to the line of ordinary low water-mark on the north-west side of the Ohio River. The court said: "It does not become necessary, in this case, to determine whether the middle of the Ohio River, the *filum medium aquæ*, does or does not constitute the boundary line between the States of Virginia and Ohio." Page 245.

However it may be as to our boundary, so far as territory is concerned, it seems that as to navigation and authority with respect to matters civil and criminal, Ohio has jurisdiction concurrent with Virginia and Kentucky over the entire river, along the borders of those states. The question was much considered in the commission that grew out of what is known as the Parkersburg case; and full abstracts of the arguments will be found in the Western Law Journal, vol. 4, pp. 145-164; vol. 5, pp. 433-437. See also *Eckerts v. Colvin*, 1 West. Law Jour., 54—Wood and Read, JJ.; *Ohio v. Stephens*, 2 West. Law Jour., 66; s. c. in error, 14 Ohio, 386; 3 West. Law Jour., 310, 337; *McCulloch v. Aten*, 2 Ohio, 308; *Benner v. Platter*, 6 Ohio, 505; *Blanchard v. Porter*, 11 Ohio, 138. See *Const. 1802, Art. VII, § 6*.

2 Debates, 231, 326, 826, 856, 870.

ARTICLE I.

BILL OF RIGHTS.

Right to freedom and protection of property.

SECTION 1. All men are, by nature, free (1) and independent, and have certain inalienable rights, among which are those of enjoying and defending (2) life and liberty, acquiring, possessing, and protecting property, (3) and seeking and obtaining happiness and safety. (*See Const. 1802, Art. VIII, § 1.*)

(1) The presumption is that every person in the state, whether a citizen or not, comes within the provision. *Birney v. State*, 8 Ohio, 230-238. "The absolute and equal freedom of all persons at birth is a funda-

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mental principle of American institutions, proclaimed with independence and incapable of abrogation. This principle was, by the Ordinance of 1787, impressed on the soil of Ohio, before there was an organized community within her limits; it is fundamental in her organization; always embodied in her Constitution; and her laws, her policy, and the convictions, the morals, and the religion of her people are instinct with its spirit." *Anderson v. Poindexter*, 6 Ohio St., 622-634—Brinkerhoff, J.

(2) "It is urged that the law in Ohio is, that a person assailed may in all cases, without retreating, take his assailant's life, if he reasonably believe it necessary to do so in order to save his own life, or to avoid great bodily harm, and this, although he could, without increasing his danger, retire, and thereby escape all necessity of slaying his adversary. As to what is the precise state of the law on this subject, there is some diversity of opinion among the members of this court, and therefore, without attempting at this time to lay it down, we prefer to dispose of the case upon a view which is satisfactory to us all. . . . Whether a person assaulted is or is not bound to quit the combat, if he can safely do so, before taking life, it will not be denied that, in order to justify the homicide, he must, at least, reasonably apprehend the loss of his own life or great bodily harm, to prevent which, and under a real or supposed necessity, the fatal blow must be given. And again, the combat must not have been of his own seeking, and he must not have put himself in the way of being assaulted, in order that when assaulted and hard pressed he might take the life of his assailant." *Stewart v. State*, 1 Ohio St., 66-72—Thurman, J.

With respect to the service, beyond the limits of Ohio, of a writ issued by a justice of the peace, the court said: "No legal or moral obligation required the constable to attempt its execution in Indiana, and an arrest made upon it there, was a violation of both public and private rights. Services rendered under such circumstances are both voluntary and without authority of law." *Smith v. Portage Co.*, 9 Ohio, 25-28—Wood, J.

Whether jurisdiction acquired over the person by bringing the party within our territorial limits, forcibly or fraudulently, can be maintained, see *ex parte Everts*, 2 Disney's Rep.; *Gill v. Miner*, 13 Ohio St., 182, and cases there cited.

(3) "When the nature of the question, and the history of the rulings on the subject of defending person and property, which have illustrated the advancement of the common law from rude and barbarous to refined and enlightened civilization, are clearly taken into view, we shall find the reasoning of Justice Redfield altogether safe, and exactly in harmony with the system of government and society to which it is applied. It is well settled, says the Justice (in *State v. Downer*, 8 Vermont, 424), that one may defend the possession of his property against a stranger with such force as may be necessary. But this right cannot be extended to the case of an officer, whose duty it is to attach property whenever he is requested so to do. He may or may not require indemnity for the act. But it would be too much to say that he must decide all questions of doubtful property at his own hazard, or that if he attempted to make an attachment when the property was not, in

fact, in the debtor, he might, by the owner of the property, be resisted to any extremity. . . . It must be familiar to all, that while the tendency of the best and highest American decisions, as well as the very genius of our government, are favorable to an increased regard for the sanctity of the person, by the same law many measures of defense as to property have become obsolete and shocking to the enlightened humanity of the day. If the rule that one must retreat to the wall before killing his assailant has passed away, so has the day of man-traps and spring-guns. . . . We hold, then, the better and safer and only practicable rule to be, that whenever the question of property is so doubtful that the creditor and officer may be supposed to act, and do act, in good faith, and on reasonable grounds for believing the property to be that of the debtor, the owner has no right to resist the execution or attachment by a breach of the peace." Again: "The conversion of an execution into an alias writ cannot affect the protection due to the constable to whom it was delivered. . . . It was irregular, but not void." *Faris v. State*, 3 Ohio St., 159-166, 168—Warden, J.

2 Debates, 231, 326, 806, 826, 856, 870.

Right to
alter, reform
or abolish
government,
and repeal
special
privileges.

SEC. 2. All political power is inherent in the people. (1) Government is instituted for their equal protection and benefit, and they have the right to alter, reform, or abolish the same, whenever they may deem it necessary; and no special privileges or immunities shall ever be granted, that may not be altered, revoked, or repealed by the general assembly. (*See Const. 1802, Art. VIII, § 1.*)

(1) "The Constitution apportions political power among the inhabitants of the state as nearly equally as possible, in proportion to numbers, without any regard whatever to property, or indeed to any other circumstance. Inhabitants alone are represented: a given number in one place exercise the same political power as a like number in any other locality." *State v. Dudley*, 1 Ohio St., 437-442—Ranney, J.

2 Debates, 231, 326, 466-468, 476-483, 485-493, 498-550, 556-559, 688-693, 806, 826 856,, 870.

Of the right
to assemble.

SEC. 3. The people have the right to assemble together, in a peaceable manner, to consult for their common good; to instruct their representatives; and to petition the general assembly for the redress of grievances. (*See Const. 1802, Art. VIII, § 19.*)

The Legislature, from an early day, has exercised the power of regulating the mode of petitioning, what the petition shall contain, the time it may be in circulation, and the notice thereof that must be given. 1 Swan & Critchfield, 919.

2 Debates, 231, 326, 462, 806, 826, 856, 870.

Of bearing
arms; stand-
ing armies;
subordina-
tion of mili-
itary power.

SEC. 4. The people have the right to bear arms for their defense and security; but standing armies, in time of peace, are dangerous to liberty, and shall not be kept up; and the military shall be in strict subordination to the civil power. (*See Const. 1802, Art. VIII, § 20.*)

Where a body of militia perform their evolutions, with martial music and firing, so near the court-house as to interrupt or suspend the business of the court, the officers may be proceeded against for a contempt, if they refuse to desist on request. *State v. Coulter*, Wright's Rep., 421; *State v. Goff*, Ib., 78.

In the first of these cases the court said: "This clause in the Constitution clearly shows the light in which the framers of this instrument viewed a resort to mercenary troops in any degree independent of the civil authority. They held such a force dangerous to liberty, and that unalterably and forever to regard it so, was a great and essential principle of liberty and free government. The determination was to constitute the militia, as only a portion of the executive authority, upon whom was devolved the duty of executing the laws and protecting its ministers from violence. It is declared a duty equally essential to liberty to regard even the militia a military force, to be forever kept under strict subordination to the civil authority. The fathers of the Republic had studied human nature deeply. Devoted to free institutions, they were jealous of any influence tending to their destruction. Hence the emphatic annunciation of the essential principle, that the military should be kept under strict subordination to the civil authority. Not a word is found in the Constitution giving countenance to the opinion sometimes expressed, and more frequently felt, that the militia or the military force, instead of being a means to be employed by the executive department in executing the important duty of executing the laws, are a distinct department of the government, equal to either of the others, and independent of their control." 424, 425—Wood and Wright, JJ.

2 Debates, 231, 326, 462, 806, 826, 856, 870.

SEC. 5. The right of trial by jury shall be inviolate.
(See *Const.* 1802, *Art. VIII*, § 8.)

Trial by
jury.

A jury is defined to be "a convenient number of citizens, selected and impartial, who, on particular occasions, or in particular causes, are vested with discretionary powers to try the truth of facts, on which depend the property, the liberty, the reputation and the lives of their fellow citizens." It is "a certain number of men sworn to inquire of and try a matter of fact, and declare the truth upon such evidence as shall be given them in a cause; and they are sworn judges upon evidence in matters of fact." "The occupying claimant laws of Ohio came under the consideration of the Supreme Court in the case of the *Bank of Hamilton v. Dudley*, 2 Peters, 133. In that case the court concede that the state has the power to secure to claimants of lands their possessions until paid for lasting improvements made by them on the land, but denies the power of the state, by its enactments, to 'change, radically, the mode of proceeding prescribed for the courts of the United States, or direct those courts, in a trial at common law, to appoint commissioners for the decision of questions which a court of common law must submit to a jury.' Such a proceeding, the court suppose, would conflict with the clause in the Constitution of the United States, which declares that 'in suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be

preserved.' It appears to us obvious that the provision of the Constitution just quoted, applies only to the courts of the United States, and does not prescribe a rule of practice for the courts of a state. . . . Indeed, we are unable to discover wherein the law of Ohio conflicts with the Constitution of Ohio. Were we to decide otherwise, there is a series of legislative acts, commencing with the organization of our government and continuing to this time, that we should be compelled to declare void. We allude to enactments providing juries in cases of forcible entry and detainer, for the trial of the rights of property, . . . for inquiry in cases of idiocy and lunacy," etc. *Hunt v. McMahan*, 5 Ohio, 132-135—Wright, J.

"The only way in which we can ascertain the true meaning of this clause, is by making inquiry whether, before the Constitution was framed, jury trial was known in such cases in the Territory of Ohio. . . . On what principle is it that juries are dispensed with in the greater number of our courts—in courts of equity, courts of admiralty, courts martial and courts of justices of the peace? Magna Charta declares that no man shall be deprived of life, liberty or property, but by the judgment of his peers or the law of the land. Mr. Sullivan (§§ 39, 40) remarks that, as juries were unknown in those courts before the great charter, their disuse constituted a part of the law of the land; and therefore, although the charter was the first great instrument which solemnly guaranteed jury trial to Englishmen, yet it has never been supposed that that institution constituted a part of the machinery of those courts. . . . He who will take the trouble to examine our laws, as well before as since the formation of our Constitution, will find that they are uniformly regarded as an appendage to the courts only. No juries are ever mentioned but such as are auxiliary to the administration of justice in some court. . . . Objections of this kind should ever be listened to with attention and earnestness; for, although, to decide upon the constitutionality of a law, is a duty which no judge should court, yet it is also one from which no judge should shrink." *Willyard v. Hamilton*, 7 Ohio, 2 pt., 111-118—Grimke, J.

"By the first of these sections (§ 5) the *right* of trial by jury is recognized to exist, and its continuance unimpeached is provided for. By the last (§ 10) this right is declared to belong to every person accused of any crime or offense, in any court of the state. What, then, is this right? It is nowhere defined or described in the Constitution. It is spoken of as something already sufficiently understood, and referred to as a matter already familiar to the public mind. The same article furnishes other examples of the same generality of expression. . . . If ages of uninterrupted use can give significance to language, the right of jury trial and the habeas corpus stand as representatives of ideas as certain and definite as any other in the whole range of legal learning. The institution of the jury referred to in our Constitution, and its benefits secured to every person accused of crime, is precisely the same, in every substantial respect, as that recognized in the great charter, and its benefits secured to the freemen of England, and again and again acknowledged in fundamental compacts as the great safeguard of life, liberty and property; the same brought to this country by our forefathers, and perseveringly claimed as their birthright in

every contest with arbitrary power; and, finally, an invasion of its privileges prominently assigned as one of the causes which was to justify them in the eyes of mankind in waging the contest which resulted in independence. . . . We do not intend to imply a doubt of the constitutionality of the act allowing juries before justices of the peace, composed of six men. Wherever facts are to be found in any proceeding, in which a jury was not required by the common law, a jury of any number may be authorized, within the discretion of the legislative body. Juries did not belong to these inferior courts at the common law; and so long as an appeal is provided for to the common law courts from their determination, it is clear no constitutional objection can arise, whether facts are found by the magistrate, or by the aid of a jury of any number of men." *Work v. State*, 2 Ohio St., 296-302—Ranney, J.; *Norton v. McLeary*, 8 Ohio St., 209.

It is beyond the power of the General Assembly to impair the right or materially vary its character. The number of jurors cannot be diminished, or a verdict authorized short of a unanimous concurrence of all the jurors. It follows that the act of March 14, 1853, "defining the jurisdiction and regulating the practice of probate courts" (51 O. L., 167; S. & C., 1212), in so far as it provides for a jury of six only, and authorizes a conviction upon their finding, is unconstitutional and void. *Work v. State*, 2 Ohio St., 296. But the act of May 1, 1854, "to extend the jurisdiction of justices of the peace," etc. (52 O. L., 100; S. & C., 770), is not unconstitutional, although it makes no provision for the trial, by a jury of twelve men, of actions commenced in virtue of such extended jurisdiction. *Norton v. McLeary*, 8 Ohio St., 205. "It is true that the act may subject the defendant to a trial, before a justice of the peace, before he can obtain a trial by jury; still the right of trial by jury remains unimpaired and perfect. The mode of obtaining it may be more inconvenient than heretofore. But on this subject a discretion is given to the Legislature, which must be so far abused as to be clearly violative of the substantial right, before this court can interfere to nullify legislative action." *Ib.*, 209—Scott, J.; See also *Reckner v. Warner*, 22 Ohio St., 275—McIlvaine, J.

In an action for the recovery of money, wherein the only relief prayed for is a money judgment, either party is entitled to demand a trial by jury, notwithstanding numerous items of account or of claim and counter-claim are involved in the issue. *Averill Coal and Oil Co. v. Verner*, 22 Ohio St., 372. *Ib.*

In such action the defendant, though in default of answer, is entitled under section 598 of the code to demand a jury to assess damages. And if it be irregular in such case for the court to make an order (on the motion of the plaintiff and against the objection of defendant) referring the cause to a referee for trial, and granting leave to defendant to answer generally, at a future day, such irregularity is cured if the defendant, after answer is filed, appear before the referee, and, without protest or objection to his jurisdiction, submit his cause to him upon the issues and proofs.

See Art. I, § 10, Note 5; Art. I, § 19, Note 7; Art. XIII, § 5, Note 6.

2 Debates, 231, 326, 327, 462, 806, 826, 857, 870.

Of slavery
and involun-
tary servi-
tude.

Of the rights
of con-
science.

The neces-
sity of relig-
ion and
knowledge.

SEC. 6. There shall be no slavery in this state; nor involuntary servitude, unless for the punishment of crime. (*See Const. 1802, Art. VIII, § 2.*)

2 Debates, 231, 327, 806, 826, 857, 870.

SEC. 7. All persons have a natural and indefeasible right to worship Almighty God according to the dictates of their own conscience. No person shall be compelled to attend, erect, or support any place of worship, or maintain any form of worship, against his consent; and no preference shall be given, by law, to any religious society; nor shall any interference with the rights of conscience be permitted. (1) No religious test shall be required, as a qualification for office, nor shall any person be incompetent to be a witness on account of his religious belief; but nothing herein shall be construed to dispense with oaths and affirmations. Religion, morality, and knowledge, however, being essential to good government, it shall be the duty of the general assembly to pass suitable laws, to protect every religious denomination in the peaceable enjoyment of its own mode of public worship, and to encourage schools and the means of instruction. (2) (*See Const. 1802, Art. VIII, § 3, 25.*)

(1) "Neither Christianity nor any other system of religion is a part of the law of this state. We sometimes hear it said that all religions are tolerated in Ohio; but the expression is not strictly accurate; much less accurate is it to say that one religion is a part of our law, and all others only tolerated. It is not by mere toleration that every individual here is protected in his belief or disbelief. He reposes not upon the leniency of government, or the liberality of any class or sect of men, but upon his natural, indefeasible rights of conscience, which, in the language of the Constitution, are beyond the control or interference of any human authority. We have no union of church and state, nor has our government ever been vested with authority to enforce any religious observance simply because it is religious. Of course it is no objection, but, on the contrary, is a high recommendation to a legislative enactment, based upon justice or public policy, that it is found to coincide with the precepts of a pure religion; but the fact is nevertheless true, that the power to make the law rests in the legislative control over things temporal, and not over things spiritual. Thus, the statute prohibiting common labor on the Sabbath (1 Curwen, 208; S. & C., 447), could not stand for a moment as the law of this state, if its sole foundation was the Christian duty of keeping that day holy, and its sole motive to enforce the observance of that duty. For no power over things merely spiritual has ever been delegated to the government, while any preference of one religion over another, as the statute would give upon the above hypothesis, is directly prohibited by the Constitution. Acts evil in their nature, or dangerous to the public welfare, may be forbidden and punished, though sanctioned by one religion and prohibited by another; but this creates no preference whatever, for they would be equally forbidden and punished if all religions permitted them. Thus, no plea of his religion could shield a murderer, ravisher or bigamist; for community would be at the mercy of super-

stitution, if such crimes as these could be committed with impunity, because sanctioned by some religious delusion." *Bloom v. Richards*, 2 Ohio St., 387-390—Thurman, J.; *McGattrick v. Wason*, 4 Ohio St., 566.

"The statute prohibiting common labor on the Sabbath is to be regarded as a mere municipal or police regulation, whose validity is neither strengthened nor weakened by the fact that the day of rest it enjoins is the Sabbath day. Wisdom requires that men should refrain from labor at least one day in seven, and the advantages of having the day of rest fixed, and so fixed as to happen at regularly recurring intervals, are too obvious to be overlooked. It was within the constitutional competency of the General Assembly to require this cessation of labor and to name the day of rest. It did so by the act referred to, and, in accordance with the feelings of a majority of the people, the Christian Sabbath was very properly selected. But, regarded merely as an exertion of legislative authority, the act would have had neither more nor less validity had any other day been adopted." *Ib.*, 391; *Sellers v. Dugan*, 18 Ohio, 489-490—Avery, J.

(2) "The system of public education in Ohio is the creature of the Constitution and statutory laws of the State. It is left to the discretion of the General Assembly, in the exercise of the general legislative power conferred upon it (Art. II, § 1), to determine what laws are "suitable" to secure the organization and management of the contemplated system of common schools, without express restriction, except that 'no religious or other sect or sects shall ever have any exclusive right to, or control of, any part of the school funds of this State.'" (Art. VI, § 2.) *State v. McCann*, 21 Ohio St., 198-205—Day, J.

Under the Constitution and laws of the state, the right to classify the youth of the state for school purposes, on the basis of color, and to assign them to separate schools for education, both upon well recognized legal principles and repeated adjudications, is too firmly established to be now judicially disturbed. *Ib.*, 208; *State v. City of Cincinnati*, 19 Ohio, 178; *Van Camp v. Board of Education of Logan*, 9 Ohio St., 406.

2 Debates, 231, 327, 328, 462, 463, 466, 469, 806, 826, 857, 870.

SEC. 8. The privilege of the writ of habeas corpus shall not be suspended, unless, in cases of rebellion or invasion, the public safety require it. (*See Const.* 1802, *Art. VIII*, § 12.)

Of the writ
of habeas
corpus.

"In what does the privilege of this great bulwark of personal liberty consist? The Constitution furnishes no answer, nor was it necessary that it should. If ages of uninterrupted use can give significance to language, the right of jury trial and the habeas corpus stand as representatives of ideas as certain and definite as any other in the whole range of legal learning." *Work v. State*, 2 Ohio St., 296-302—Ranney, J.

"The privilege of the writ of habeas corpus is secured by our national and state constitutions to every citizen. It can only be suspended or withheld in cases of rebellion or invasion, when the public safety may require it. Subject to that reserved right of the national or state governments, to be employed in the extreme cases named, each citizen is vested with this ancient and sacred shield of liberty. To the judicial department of the government is delegated the duty

of enforcing applications for its invaluable benefits, when properly demanded. Our statute relating to the subject gives to the judges of the courts, separately, at chambers, jurisdiction of the subject-matter in all cases, except when the person is convicted of a crime or offense, and stands committed for it; or where he is committed for treason or felony, the punishment whereof is capital, plainly expressed in the warrant of commitment. Not only is such jurisdiction given to the judges, but when the person who is unlawfully deprived of his liberty, makes his application to one of them, as provided in the law, for the benefits of the writ, it is made the duty of such judge forthwith to issue it. The exempted cases of convicted persons who stand committed, and of treason or felony, punishable capitally, are the only restrictions upon the power of a single judge. The common law courts are clothed with power adequate for those and for all other cases which may arise. In the exercise of this power by a single judge, or a court, every case of unlawful imprisonment may be reached and examined into. 'No matter where or how the chains of captivity were forged, the power of the judiciary, in this state, is adequate to crumble them to the dust, if an individual is deprived of his liberty, contrary to the law of the land.' " *Ex parte Collier*, 6 Ohio St., 55-58, 59—Bowen, J.

If a court, having jurisdiction of an offense punishable by a valid and constitutional law, pronounces sentence, and the commitment under that sentence is returned on habeas corpus, the form of the indictment, or the want of proper allegations therein, cannot be inquired into, nor can the previous proceedings of the court be revised and reviewed; for this process cannot be converted into a writ of error. In such case the court, having jurisdiction over the offense, must itself pronounce the law of the case, and, until reversed by some competent tribunal, is conclusive on all other courts, and puts an end to all collateral inquiry on habeas corpus. Hence it is that the statute itself, relating to this writ, excepts from those who are entitled to the benefit of it, all persons convicted of a crime or offense for which they stand committed, plainly and specifically expressed in the warrant of commitment." *Ex parte Shaw*, 7 Ohio St., 81; *ex parte Bushnell*; *ex parte Langston*, 9 Ohio St., 77-183—Swan, C. J.

Where the court erroneously refuses to grant an order of discharge, and instead thereof remands the prisoner to jail, and continues the cause, the order remanding the prisoner to jail, so long as it remains unreversed, is a valid and legal authority to the sheriff for retaining the prisoner in custody, and the order cannot be reviewed and reversed, or the prisoner discharged, by a proceeding in habeas corpus before another tribunal. *Ex parte McGehan*, 22 Ohio St., 442.

2 Debates, 231, 328, 806, 826, 857, 870.

Bailable offenses.
Of bail, fine
and punishment.

SEC. 9. All persons shall be bailable by sufficient sureties, except for capital offenses where the proof is evident, or the presumption great. Excessive bail shall not be required; nor excessive fines imposed; nor cruel and unusual punishments inflicted. (*See Const. 1802, Art. VIII, §§ 12, 13.*)

"Who is to decide whether the proof be evident, or the presump-

tion great? Most undoubtedly the same authority which prescribes the amount of bail, and passes upon the sufficiency of the sureties; the judges of the court who exercise this same power in all analogous cases known to our laws. . . . The appeal must be addressed to the discretion of the court; a sound legal discretion it is true, but one that can only be moulded into action by the evidence brought to bear upon the indictment." *State v. Summons*, 19 Ohio, 139, 140—Spalding, J. 2 Debates, 231, 328, 806, 826, 857, 870.

SEC. 10. Except in cases of impeachment, and cases arising in the army and navy, or in the militia when in actual service in time of war or public danger, and in cases of petit larceny and other inferior offenses, (1) no person shall be held to answer for a capital, or otherwise infamous crime, unless on presentment or indictment of a grand jury. (2) In any trial, in any court, the party accused shall be allowed to appear and defend in person and with counsel; to demand the nature and cause of the accusation against him, (3) and to have a copy thereof; to meet the witnesses face to face, (4) and to have compulsory process to procure the attendance of witnesses in his behalf, and a speedy public trial by an impartial jury (5) of the county or district, in which the offense is alleged to have been committed (6); nor shall any person be compelled, in any criminal case, to be a witness against himself, or be twice put in jeopardy for the same offense (7). (*See Const. 1802, Art. VIII, § 11.*)

Of the trial of accused persons and their rights.

(1.) "By this section of the Constitution, a presentment or indictment of a grand jury is dispensed with 'in cases of petit larceny and other inferior offenses.' How such offenses should thereafter be prosecuted, depended entirely upon legislative discretion. It is very evident that petit larceny is simply named as one of a class of offenses; and equally so, that the class was intended to embrace all offenses for which a punishment less than imprisonment in the penitentiary is provided. This was a classification so long used in our laws, and so well understood, as to leave no doubt that it was the one intended to be adopted by the Convention." *Dillingham v. State*, 5 Ohio St., 280, 282—Ranney, C. J.

"There are many offenses, made so by statute, though decidedly immoral and mischievous in their tendencies, that are not crimes, but at most only *quasi* criminal, and where the Legislature may direct the mode of redress, untrammelled by this constitutional provision. Such are Sabbath-breaking, selling spirituous liquors on Sunday, and the disturbance of religious meetings, with many others. Of such, jurisdiction may be given to justices of the peace, or the mayor of an incorporated town." *Markle v. Town Council of Akron*, 14 Ohio, 586-589—Wood, C. J.

(2) Where, on an indictment for grand larceny presented against H. L., a person was arraigned, and pleaded in abatement that his name is not H. L., but W. H. L., and the plea was found to be true, and the name thus disclosed was entered on the minutes of the court, and the trial and further proceedings were had in pursuance of section 112

of the Code of Criminal Procedure: Held, that this section of the code is not in contravention of this section of the Constitution. *Lasure v. State*, 19 Ohio St., 43.

“An individual accused of a crime cannot be compelled to answer the charge until the same has been made through the intervention of a grand jury, in the form of an indictment or a presentment. Should the Legislature pass an act to compel an individual to answer, without this prerequisite, such an act would be in violation of the Constitution, and void. But this clause in the Constitution has nothing to do with the particular forms of indictments. These forms will vary according to the nature of the criminal acts prohibited. The Legislature have the power to declare what acts are criminal; and they have the same power to prescribe the forms of indictments for the commission of such criminal acts. They cannot dispense with the indictment itself; but they can dispense with some of its technical formalities.” *Lougee v. State*, 11 Ohio, 68-70—*Hitchcock, J.*; *Wolf v. State*, 19 Ohio St., 248-255; *Turpin v. State, Ib.*, 540-545.

(3) “The indictment, in the contemplation of the Constitution, is that written statement of the nature and cause of the accusation, with all the certainty and substantial requirements heretofore sanctioned and declared essential by the settled law of the country. Why these provisions in the fundamental law of the State? Why the ceremony and expense of a grand jury to find and return an indictment setting out the ‘nature and cause of the accusation’? and why guarantee to the accused the right to demand and have a copy of the indictment, if the written averments, descriptive of the crime, are not required to be made with certainty and truth, charging the overt act, with all the substantial and distinguishing ingredients which the statute creating the offense has made essential to constitute the crime? If any one or more of the substantial ingredients or distinguishing constituents of the crime may be omitted, the written accusation required would become a mere snare by which to mislead and entrap the accused on his trial. Where either purpose, intent, or knowledge, is, by the statute, made a distinguishing characteristic of a crime, it is as essential that such purpose, intent, or knowledge should be averred in the description of the act charged as the crime as any other material and distinguishing ingredient.” *Fouts v. State*, 8 Ohio St., 98-114, 115—*Bartley, C. J.*

The indictment or information must aver all the material facts which it is necessary to prove to produce a conviction, and with such reasonable certainty as to advise the accused what he may expect to meet on the trial. *Dillingham v. State*, 5 Ohio St., 280; *Lougee v. State*, 11 Ohio, 68; *Lamberton v. State, Ib.*, 282; *Anderson v. State*, 7 Ohio, 2 pt., 250; *Davis v. State*, 7 Ohio, 1 pt., 205; *Hess v. State*, 5 Ohio, 1-12; *Gatewood v. State*, 4 Ohio, 387; *Fouts v. State*, 8 Ohio St., 98-114.

It is sufficient, in an indictment for manslaughter, to charge the crime in accordance with section 92 of the Code of Criminal Procedure. That section is not repugnant to the Constitution. *Wolf v. State*, 19 Ohio St., 248.

The provision in section 96 of the Code of Criminal Procedure, which declares that it shall be sufficient in any indictment, where it is necessary to allege an intent to defraud, to allege that the party accused did

the act with intent to defraud, without alleging an intent to defraud any particular person, is not in conflict with this provision. *Turpin v. State*, 19 Ohio St., 540.

(4) "This, like numerous other provisions in the Bill of Rights, is a constitutional guaranty of one of the great fundamental principles well established and long recognized at common law, both in England and in this country. The scope and operation of it are clearly defined and well understood, in the common law recognition of it; and the assertion of it in the fundamental law of the state, was designed neither to enlarge nor curtail it in its operation, but to give it permanency and secure it against the power of change or innovation. The object of this provision manifestly is to exclude testimony by depositions, by requiring it to be given orally, in the presence of the accused, on the trial. The admission of testimony by depositions against the accused in a criminal cause, would often afford the prosecutor great advantages over him, as well as furnish, at times, opportunities for abuses beyond the reach of detection by the defendant. Deprived of this right, the accused would often be without the opportunity of cross-examination, without the means of seeing, hearing or knowing the persons who testify against him, and without the advantage of an oral examination of the witnesses before the jury which is to decide upon his case. But important as this right is, as established at common law and secured by the Constitution, it has application to the matter of the personal presence of the witnesses on the trial, and not to the subject matter or competency of the testimony to be given. The requirement that the accused shall be confronted, on his trial, by the witnesses against him, has sole reference to the personal presence of the witness, and it in no wise affects the question of the competency of the testimony to which he may depose. When the accused has been allowed to confront, or meet face to face, all the witnesses called to testify against him on the trial, the constitutional requirement has been complied with." *Summons v. State*, 5 Ohio St., 325-340; *Bartley*, C. J.

Testimony proving the statements made by a deceased witness on oath, at a former trial between the same parties, being one of the established exceptions to the rule that hearsay is incompetent as evidence, the admission of a witness to give evidence of this kind in a criminal case, does not contravene this provision of the Constitution. (*Ib.*, 325.) So in regard to evidence of dying declarations, the objection to such evidence going to the competency of the evidence, and not to the competency of the witness. *Ib.*, 342; *Robbins v. State*, 8 Ohio St., 131; *Montgomery v. State*, 11 Ohio, 424; *Wagers v. Dickey*, 17 Ohio, 439.

(5) "The right of the accused to an impartial jury cannot be abridged. To secure this right, it is necessary that the body of triers should be composed of men indifferent between the parties, and otherwise capable of discharging their duty as jurors. Whether in the practical administration of justice the right is infringed, is, necessarily, a judicial question; and whether, in a particular case, a proposed juror has the state of mind which will render him impartial, is a question of fact which it is the duty of the court trying the case to decide. This duty is enjoined by the Constitution, and, it is true, cannot be impaired or the right abridged by legislative action. The previous demeanor of the juror,

the information he may have received, or the opinions he may have entertained or expressed, are only evidence of the state of his mind, and are material only as they may tend to show a free judgment of the case, the existence of prejudice against either of the parties, or his indifference between them." *Cooper v. State*, 16 Ohio St., 328-331—White, J.; see *Martin v. State*, 16 Ohio, 364.

The constitutional right of trial by jury is not infringed, when the option is given to the accused to have the issue tried by the court or the jury, and he submits the cause to the court. *Dillingham v. State*, 5 Ohio St., 280. And section 42 of the "act defining the jurisdiction and regulating the practice of probate courts," passed March 14, 1853 (51 O. L., 167; S. & C., 1212), providing that "upon a plea other than a plea of guilty, if the defendant do not demand a trial by jury, the probate judge shall proceed to try the issue," is a valid and constitutional enactment. *Dailey v. State*, 4 Ohio St., 57.

The issue made by the plea of not guilty cannot be tried by the court, without the waiver by the parties of a jury trial. *Slocum v. Lessee of Swan*, 4 Ohio St., 161.

But upon the trial of an issue raised by a plea of not guilty, in the higher grades of crime, it is not in the power of the accused to waive a trial by jury, and, by consent, submit to have the facts found by the court, so as to authorize a legal judgment and sentence upon such finding. *Williams v. State*, 12 Ohio St., 622.

Section 8 of the act of April 16, 1857 (Swan & Critchfield, 690), "to authorize the establishment of houses of refuge," and the statutes subsequently enacted enlarging the operation of that act so as to authorize commitments to "The State Reform Farm" (S. & C., 1380, 1381; S. & S., 388), are not repugnant either to this section or to section five of this article, although they make no provision for a trial by jury. *Prescott v. State*, 19 Ohio St., 184.

In a summary proceeding before the probate court, under the act of February 26, 1843 (S. & C., 618), on complaint of an administrator against a party suspected of embezzling, concealing or conveying away the property or effects of the estate, the court has no constitutional power to render judgment against the party so charged, except for such property and effects as he, on his examination, admits himself guilty of having embezzled, concealed or carried away; and to the extent that the statute professes to authorize a judgment in cases where there is a controversy between the parties, it is unconstitutional. *Howell v. Fry*, 19 Ohio St., 556.

An ordinance of an incorporated village provided that persons keeping billiard-tables, to be used by others, should be imprisoned for a term not exceeding thirty days. Held, that although such an ordinance may have been authorized by section 35 of the Municipal Corporation Act, as amended April 5, 1856 (S. & C., 1507), yet no corresponding change in the powers and jurisdiction of mayors of incorporated villages, so as to furnish the means of a trial by jury, having been made, a trial and sentence to imprisonment, by the mayor, of a person charged with a violation of the ordinance, are illegal. *Thomas v. Village of Ashland*, 12 Ohio St., 124. "It would be a grave question whether the Legislature could create a new offense, to be punished by

imprisonment, and provide that the trial for such offense should be before a single judge, without a jury." *Ib.*, 129—Gholson, J.

The act supplementary to an act directing the mode of trial in criminal cases, passed March 3, 1860 (S. & C., 1197), is not repugnant to this section. *Cooper v. State*, 16 Ohio St., 328.

See further as to trial by jury:—Art. I, § 5, and notes; Art. I, § 19, Note 7; Art. XIII, § 5, Note 6.

(6) In the case of *State v. Arrison*, which was an indictment for murder, referred to in 8 Ohio St., 124, an order was made by Parker, J., of the Hamilton County Common Pleas, changing the venue to the County of Butler; but the presiding judge (Clark, J.), after full argument, held that this could not be done, in view of this constitutional provision.

(7) "This constitutional provision extends the common law maxim, which was limited to felonies, to all grades of offenses; and it is but the application to the administration of criminal justice of a more general maxim of jurisprudence, that no one shall be twice vexed for one and the same cause. On this maxim rests the whole doctrine of *res adjudicatæ*. The object of incorporating it into the fundamental law, was to render it, as respects criminal causes, inviolable by any department of the government." *State v. Behimer*, 20 Ohio St., 572-576—White, J.

"It is the right of the state, and one of the most solemn and responsible of its duties, to punish crime; and it is the absolute right of any one accused of crime to demand, 'a speedy public trial by an impartial jury,' and a verdict, declaring his guilt or innocence, according to the due course of law. The one is indispensably necessary to the safety of the community and the preservation of peace and order, and the other for the protection of the innocent, and to prevent the oppression, which might otherwise be practiced, by those having charge of state prosecutions. The problem has always been to preserve intact both of these important rights; and the object has been completely accomplished, by holding the accused liable to answer, until, in the regular course of judicial proceedings, the tribunal charged with the issue, without molestation or interference, has had the fullest and amplest opportunity to pass upon the question of his guilt; and by making every interference on the part of the government, by which a verdict is prevented, while a reasonable hope remains that one may be rendered, an absolute bar to his further prosecution. If a verdict cannot be obtained upon one trial, another may be lawfully had; and the unavoidable delay which ensues, is the fault of no one. For the better protection of the accused, the law requires unanimity in the jury before a verdict can be rendered; but to allow, on the one hand, the ignorance, perversity, or even honest mistake of a single juror to paralyze the administration of justice, and turn loose upon the community the most dangerous offenders, or, on the other, to allow the government to trifle with the constitutional safeguards of the accused, would equally subvert the foundation principles upon which the criminal code is administered." *Dobbins v. State*, 14 Ohio St., 493-501—Raney, J.

When the defendant, in a criminal prosecution, is discharged under

the 161st or 162nd section of the criminal code, on the ground that he has not been brought to trial within the time therein limited, the order of discharge is to be regarded, not as a mere temporary release of the prisoner from confinement, but as a final judgment in the cause, and a bar to all subsequent prosecutions for the same crime or offense. *Ex parte McGehan*, 22 Ohio St., 442.

A jury, charged with the trial of a capital case, after long deliberation unable to agree upon a verdict, may be discharged by the court, and the accused held to a further trial, without any infringement of this provision. The power to do so, against his consent, only exists in cases of absolute necessity, and when the jury have considered the cause for such a length of time, as to leave no reasonable expectation that they will be able to agree upon a verdict. *Dobbins v. State*, 14 Ohio St., 493; *Poage v. State*, 3 Ohio St., 229-239; *Hurley v. State*, 6 Ohio, 400.

But where a court, in a criminal case, after a jury have retired to consult on their verdict, discharges them without the assent of the prisoner, and without the existence of a cause for which they might lawfully be discharged, the prisoner cannot be again tried for the same offense. *Poage v. State*, 3 Ohio St., 229.

"Though the existence of the power was once doubted, it is now well settled that the court has the power, at the instance of the defendant, after a verdict of conviction, to grant a new trial, without infringing this provision. The power has been uniformly exercised in this state, when, in the judgment of the court, a proper case arose." *State v. Behimer*, 20 Ohio St., 572-576—White, J.

Article five of the amendments of the Constitution of the United States does not operate as a limitation of the power of the state governments over their own citizens, but is exclusively a restriction upon federal power. *Prescott v. State*, 19 Ohio St., 184.

2 Debates, 231, 328, 329, 330, 463, 476, 806, 826, 857, 870.

Of the
freedom of
speech and
of the press.

Of libels.

SEC. 11. Every citizen may freely speak, write, and publish his sentiments on all subjects, being responsible for the abuse of the right; (1) and no law shall be passed to restrain or abridge the liberty of speech, or of the press. In all criminal prosecutions for libel, the truth may be given in evidence to the jury, and if it shall appear to the jury, that the matter charged as libelous is true, and was published with good motives, and for justifiable ends, the party shall be acquitted. (*See Const. 1802, Art. VIII, § 6.*)

(1) "The liberty of the press, properly understood, is not inconsistent with the protection due to private character. It has been well defined as consisting in 'the right to publish, with impunity, the truth, with good motives, and for justifiable ends, whether it respects government, magistracy, or individuals.'" *Cincinnati Gazette Co. v. Timberlake*, 10 Ohio St., 548-555—Scott, J.

Whilst a full, impartial and correct account of a trial in a court of justice, unaccompanied by defamatory comments, may, in general, be published with impunity, yet this privilege does not extend to the pub-

lication of preliminary proceedings merely, which are of a purely *ex parte* character, such as a statement, in detail, of the contents or substance of an affidavit, made before a police magistrate, with a view to the arrest of a party thereby charged with crime. Such publication can be justified only by showing the truth of the charge. *Ib.*, 548; and see the same case on trial below reported in 1 Disney's Rep., 320.

"No man can be held responsible in a civil proceeding for publishing the truth; but he is responsible for publishing a falsehood, unless he shows a justification in the occasion or circumstances. To publish that which is false and injurious to another, must be deemed an abuse. So, if the first publication of false and injurious matter be an abuse of the right of speech, or of the liberty of the press, and a wrongful act, it can confer no right on another to repeat or republish. This is also an abuse, for which the party repeating or republishing becomes responsible. And it is now well settled that this responsibility cannot be escaped by giving the name of the author or first publisher. And no such doctrine has at any time obtained countenance in reference to a libel or written slander. To repeat what a man hears in conversation, is quite a different matter from writing it out and publishing it in a newspaper. Where such libel consists in publishing the fact of an accusation having been made against another, the defendant must show the accusation to be true." *Ib.*, 1 Disney's Rep., 320-322—Gholson, J.

2 Debates, 231, 330, 468, 559, 806, 826, 857, 870.

SEC. 12. No person shall be transported out of the state,⁽¹⁾ for any offense committed within the same; and no conviction shall work corruption of blood, or forfeiture of estate. (*See Const.* 1802, *Art. VIII*, §§ 16, 17.)

Transportation, etc., for crime.

(1) "This prohibition must have been intended to limit the Legislature in the punishment of crimes, referring the forbidden transportation or banishment to that which is involuntary on the part of the criminal, and made a part of the judgment of the tribunal pronouncing sentence. But a condition attached to a pardon granted by the Governor of Ohio to a person convicted and committed to the state penitentiary for the period of five years, that he would immediately leave the state, and not return during that period, is valid; and if, in violation of it, he is found within the state afterward, he is liable to arrest as an escaped convict." *Ex parte Lockhart*, 1 Disney's Rep., 105-107—Storer, J. (*See Art. III*, § 11, *note*.)

2 Debates, 231, 330, 464, 467, 468, 806, 826, 857, 870.

SEC. 13. No soldier shall, in time of peace, be quartered in any house, without the consent of the owner; nor, in time of war, except in the manner prescribed by law. (*See Const.* 1802, *Art. VIII*, § 22.)

Of quartering troops.

2 Debates, 231, 330, 806, 826, 857, 870.

SEC. 14. The right of the people to be secure in their persons, houses, papers and possessions, against unreasonable searches and seizures shall not be violated; and no warrant shall issue, but upon probable cause, supported by oath or affirmation, particularly describing the place to be searched,

Search warrants and general warrants.

and the person and things to be seized. (*See Const.* 1802, *Art. VIII*, § 5.)

2 Debates, 231, 330, 464, 806, 826, 857, 870.

No imprisonment for debt.

SEC. 15. No person shall be imprisoned for debt (1) in any civil action, on mesne or final process, unless in cases of fraud. (2) (*See Const.* 1802, *Art. VIII*, § 15.)

(1) The provision in the Bastardy Act (S. & C., 178, Sec. 6), directing the putative father to be committed to jail in default of giving security to perform the order of the court charging him with the maintenance of his illegitimate child, is not in conflict with this section. The sum in which the defendant is charged with the maintenance of the child, is not a debt within the meaning of this provision of the Constitution. *Musser v. Stewart*, 21 Ohio St., 353; *Perkins v. Mobley*, 4 Ohio St., 668; *Hawes v. Cooksey*, 13 Ohio, 242-245.

(2) "This constitutional provision clearly contemplates legislation before any arrest could be made in civil actions, though fraud may have intervened. Courts, therefore, whether of general or limited jurisdiction, have now no common law power to authorize arrests in such cases, and the power, if it exists at all, must have been conferred by express legislation." *Spice v. Steinruck*, 14 Ohio St., 213-218—Peck, C. J.

An arrest cannot be made, in a civil action, on the ground that the defendant is not a resident of the State of Ohio. *Messenger v. Lockwood*, 9 West. Law Jour., 521.

2 Debates, 231, 330, 331, 464, 466, 806, 826, 857, 870.

Of redress in courts.

SEC. 16. All courts shall be open, and every person, for an injury done him in his land, goods, person, or reputation, shall have remedy by due course of law; and justice administered without denial or delay. (*See Const.* 1802, *Art. VIII*, § 7.)

2 Debates, 337, 464, 806, 826, 857, 870.

Hereditary privileges, etc.

SEC. 17. No hereditary emoluments, honors, or privileges, shall ever be granted or conferred by this state. (*See Const.* 1802, *Art. VIII*, § 24.)

2 Debates, 231, 335-337, 466, 467, 806, 826, 857, 870.

Suspension of laws.

SEC. 18. No power of suspending laws shall ever be exercised, except by the general assembly. (*See Const.* 1802, *Art. VIII*, § 9.)

2 Debates, 231, 337, 464, 468, 469, 806, 826, 857, 870.

Of the inviolability of private property.

SEC. 19. Private property shall ever be held inviolate, (1) but subservient to the public welfare. (2) When taken in time of war or other public exigency, imperatively requiring its immediate seizure or for the purpose of making or repairing roads, which shall be open to the public, (3) without charge, a compensation shall be made to the owner, in money, and in all other cases, where private property shall be taken for public use, (4) a compensation therefor shall first be made in money, (5) or first secured by a deposit of money; (6) and such compensation shall be assessed by a jury, (7) without deduction for benefits to any property of the owner. (8) (*See Const.* 1802, *Art. VIII*, § 4.)

(1) The statute for the relief of occupying claimants, passed March 10, 1831 (3 Curwen, 2403; S. & C., 881), requiring the value of the per-

manent improvements of the *bona fide* occupant, under color of title, to be paid as a condition precedent to the entry and possession of the owner, although an encroachment on the rights of private property as settled by the common law, rests upon a strong equity in favor of a compensation for improvements, which have augmented the value of the land, and inured to the benefit of the owner. *McCoy v. Grandy*, 3 Ohio St., 463.

The option which this law gives to the owner of land, after a recovery in ejectment, either to take the land on paying for the improvements, or to take the amount of its value in money without the improvements, secures to the owner the property in the land, and at the same time protects the occupying claimant in his equitable claim to a compensation for his improvements. *Ib.*

But the amendatory act of March 22, 1849 (2 Curwen, 1497; S. & C., 886), giving to the occupying claimant the option which the original act gave to the owner of the land, thus taking the property away from the owner after the solemn form of a recovery and judgment in ejectment, and transferring it to his unsuccessful adversary, who is ordered to be ejected as an intruder on the land, is a palpable invasion of the right of private property. *Ib.*

In case of a mortgage, a judgment lien, a levy under execution, assessment of a tax, or other incumbrance on land arising out of the owner's liabilities, it is not within the scope of the legislative power to take the fee in the land from the owner and transfer it absolutely to the person holding the claim, while the owner stands ready and insists on discharging the liability and saving his property. *Ib.*

The competency of the legislative power to transfer the property of one person to another, without the consent of the former, is not shown by any analogy either to proceedings in partition or the bar of the statute of limitations. In the case of the former, although the right of partition is an incident to the estate of tenancy in common, and the division the result of necessity, yet the owner is not divested of his property without the opportunity of saving it by a purchase; and in the case of the latter, the bar of the statute rests upon a rule of evidence raising a presumption that a title has passed, and upon this ground the aid of the judicial power is denied to one who has slept too long on his rights. *Ib.*

The occupying claimant law rests upon entirely different ground; and in securing to the occupant a compensation for his improvements, as a condition precedent to the restitution of the property to the owner, it goes to the utmost stretch of the legislative power touching the subject. And the amendatory act of 1849, providing for the transfer of the land to the occupying claimant without the consent of the owner, is in plain conflict with this provision, and is, therefore, unconstitutional and void. *Ib.*

"The plaintiff's affidavit in replevin of his property and right of possession, and the defendant's possession and claim of right to the same property, make a case of disputed ownership to the chattel replevied. Our statute directs its seizure and delivery over to the plaintiff, if he will give bond with surety to pay to the defendant all damages; and if he do so, then the disputed right of the defendant to the chattel

becomes a mere right in action to recover its value from the plaintiff and his sureties; but if the plaintiff fails to give bond, then the property is returned to the defendant, and the plaintiff's right to the chattel is changed into a mere right to recover its value, in that action, from the defendant. And to this there is no constitutional objection." *Smith v. McGregor*, 10 Ohio St., 461-474—Peck, J.

(2) This clause clearly prohibits the taking of private property for private use, without the owner's consent. *Reeves v. Treas. of Wood Co.*, 8 Ohio St., 333-345. Nor could it be so taken, were there no constitutional provision on the subject. *Shaver v. Starrett*, 4 Ohio St., 494-498—Thurman, C. J.

The power of eminent domain is not conferred either by this section or by the fifth section of Article XIII; they simply prescribe modes for, and limitations upon, its exercise. The power is an inseparable incident of sovereignty, and its exercise for the accomplishment of lawful objects is conferred upon the General Assembly in the general grant of legislative authority (Art. II, § 1). *Giesy v. C. W. & Z. R. R. Co.*, 4 Ohio St., 308.

It may be used to appropriate lands for a public highway of any kind, and this whether the road is built and owned by the public or by a corporation as a public instrumentality, provided it is kept open for public use as a matter of right, or, according to the nature of the work, the corporation is made a common carrier of goods or of passengers. *Ib.*

It may be exercised directly or indirectly by the General Assembly, without the intervention of the judiciary, except for determining the amount of compensation. But the courts possess full power to determine its proper limits, and to prevent abuses in its exercise. *Ib.*

The power rests upon public necessity, and can only be exercised where such necessity exists. But this necessity relates rather to the nature of the property, and the uses to which it is applied, than to the exigencies of the particular case; and it is no objection to the exercise of the power, that lands, equally feasible, could be obtained by purchase. *Ib.*

Only such interest as will answer the public wants can be taken; and it can be held only so long as it is used by the public, and cannot be diverted to any other purpose. *Ib.*

Under the statute authorizing the appropriation of private property for a public wharf, by a municipal corporation, the discretion of determining the quantity of ground required for such purpose is vested in the corporation; and where, in making the appropriation, this discretion has been exercised by the municipal authorities in good faith, their action is final. *Iron R. R. Co. v. Ironton*, 19 Ohio St., 299.

Authority to lay down the necessary structure for a street railway, in a common highway or street, and to run cars thereon for the carriage of passengers for hire, may be lawfully granted to a company incorporated for that purpose, when no private right of the adjoining lot-owners is thereby impaired. *Street Railway Co. v. Cumminsville*, 14 Ohio St., 524.

The Legislature may authorize the occupation of an easement originally acquired by grant or appropriation, in any manner calculated to

further the general objects of the acquisition; but may not divert it to purposes which exclude the original uses, or lay additional burdens upon the land, or destroy or impair the incidental easements of adjoining lot-owners in the street or highway. This interest of adjoining lot-owners is properly protected by the Constitution, and subject to be taken or appropriated only upon the condition that compensation is made. *Ib.*; *Hatch v. C. & I. R. R. Co.*, 18 Ohio St., 92; *Sargent v. O. & M. R. R. Co.*, 1 Handy's Rep., 52.

A claimant for damages in the alteration of a road, is not entitled to recover where such alteration merely renders the road less convenient for travel, without directly impairing his access to the road from the improvements on his land. *Jackson v. Jackson*, 16 Ohio St., 163.

It is well settled that an action lies as well for damage to adjoining property by stopping or impairing the travel on, to, or from a street or highway, as any other damage that can be done to property, although the property injured may not be touched by the obstruction. *L. M. R. R. Co. v. Naylor*, 2 Ohio St., 235.

The owners of unimproved lots cannot recover damages from a municipal corporation for filling, ditching or cutting down streets, being presumed to purchase with a view to a reasonable improvement of the streets. *Crawford v. Village of Delaware*, 7 Ohio St., 459.

The owners of lots upon a street, the grade of which has not been established, must use reasonable care and judgment in making improvements with a view to a reasonable and proper grade; and the town or city will not be responsible for injuries to such improvements by afterward grading the street, if the grade by ordinary care could have been anticipated. *Ib.*; *Cincinnati v. Penny*, 21 Ohio St., 499.

But if erections are made on a lot in accordance with an established grade, and the grade is afterward altered, and a substantial injury is thereby done to the owner of a lot, he is entitled to compensation. *Crawford v. Village of Delaware*, 7 Ohio St., 459; *Street Railway v. Cummins*, 14 Ohio St., 523; *Cincinnati v. Penny*, 21 Ohio St., 499.

(3) A township road in this state is a public highway, and subject to the uses of all having occasion to travel it, and may be highly necessary to enable the person or persons most immediately and directly interested in it, to discharge properly, and without trespassing on their neighbors' premises, many of the public duties enjoined upon them as citizens of the state. In the establishment of such roads, therefore, by the exercise of the right of eminent domain, private property may be made subservient to the public welfare, on payment therefor in money. *Ferris v. Bramble*, 5 Ohio St., 109; *Shaver v. Starrett*, 4 Ohio St., 494.

The interest of the public in public roads, consisting of a perpetual easement in the land covered by them, for all the actual uses and purposes of public travel, may, at the discretion of the General Assembly, be transferred, without any pecuniary equivalent, to a plankroad company, such plankroad still remaining a public highway, and subject to the same uses and purposes as before. In such case the company becomes the assignee of the public, and lawfully possessed of the same interest the public had. Such change of the mode of supporting an existing highway cannot be presumed to affect injuriously the rights of the propri-

etors of land over which it passes, and if such injury is claimed to have resulted, it must be proved. *C. F. & C. P. R. Co. v. Cane*, 2 Ohio St., 420.

(4) The act of May 1, 1862, entitled "An act to provide for locating, establishing and constructing ditches, drains and water-courses in townships" (59 O. L., 93), is not repugnant to the Constitution of the state in so far as its provisions relate to the taking of private property for township ditches, whenever the public health, convenience or welfare demands it; nor in so far as its provisions relate to the mode of compensating the owner for property taken for the public use; nor in so far as its provisions relate to the assessment of the costs of constructing the ditch upon lands benefited thereby. *Sessions v. Crunkilton*, 20 Ohio St., 349. But the act of May 1, 1854, "authorizing the trustees of townships to establish water-courses," etc. (Swan's R. S., 333), and the amendatory act of April 14, 1857 (Swan's R. S., 333), are in contravention of this section, inasmuch as they authorize an appropriation of private property without reference to the public welfare. *Reeves v. Treas. of Wood Co.*, 8 Ohio St., 333.

The opening of a street, by the ordinance of a municipal corporation, is a dedication of the property condemned to a specific use, *i. e.*, a street or highway; and the owners of such property have an immediate right of action therefor against the city. By the fact of thus ordering the street to be opened, the council declare the necessity for its existence, and cannot afterwards recklessly rescind their action, nor appropriate the property condemned to other uses, especially when other parties, in consequence of obeying such order, have surrendered or acquired valuable rights, and must be greatly damaged by the change. *Strader v. Cincinnati*, 1 Handy's Rep., 446.

The use for which private property may be taken must be strictly public. A canal is such a public work that private property may be taken in constructing it. *Cooper v. Williams*, 4 Ohio, 253-288; *Willyard v. Hamilton*, 7 Ohio, 2 pt., 111. And also in repairing it. *Bates v. Cooper*, 5 Ohio, 115-119. A toll-bridge, authorized by law, is also such a work. *Young v. Buckingham*, 5 Ohio, 485. So are public streets. *Hickox v. Cleveland*, 8 Ohio, 543; *Symonds v. Cincinnati*, 14 Ohio, 147; *Brown v. Cincinnati*, *Ib.*, 541. So are turnpikes. *Kemper v. C. C. & W. T. Co.*, 11 Ohio, 393. And railroads. *Moorehead v. L. M. R. R. Co.*, 17 Ohio, 340. And township roads. *Ferris v. Bramble*, 5 Ohio St., 109; *Shaver v. Starrett*, 4 Ohio St., 494. And township ditches, drains and water-courses, when the public health, convenience or welfare demands them. *Sessions v. Crunkilton*, 20 Ohio St., 349; and see *Reeves v. Treas. of Wood Co.*, 8 Ohio St., 333.

(5) An assessment of damages in the "sum of one hundred and fifty dollars, with a wagon way and stop for cattle," as the damages sustained by the owner of land taken for the construction of a railroad, is not in conformity with this provision. *C. O. R. R. Co. v. Holler*, 7 Ohio St., 220.

No valid appropriation of property for public use can be made without a law providing compensation to the owner, to be assessed in the mode prescribed in the Constitution. The Constitution, in this particular, does not execute itself. *McArthur v. Kelly*, 5 Ohio, 140; *Foote v. Cincinnati*, 11 Ohio, 408; *Lamb v. Lane*, 4 Ohio St., 167; *Shaver v.*

Starrett, Ib., 494; *Watson's Ex'r v. Trustees of Pleasant Tp.*, 21 Ohio St., 667; *Cincinnati v. Com. of Hamilton Co.*, 1 Disney's Rep., 4.

(6) In case of the assessment of damages for laying out a road over the lands of any person, the damages or compensation for the land necessary to be taken must be paid or tendered in money, or secured to be paid to the acceptance of the owner, before the opening of the road can be ordered. *Ferris v. Bramble*, 5 Ohio St., 109.

Under the act to provide for locating, establishing and constructing ditches, drains and water-courses (S. & C., 523; S. & S., 313), personal notice to the owner of lands sought to be taken for the construction of a ditch is not indispensable in order to its condemnation and appropriation, the notice by publication provided for therein being sufficient for that purpose. *Cupp v. Com. of Seneca Co.*, 19 Ohio St., 173.

A land-owner failing to make application for compensation or damages within the time limited by the act, will be deemed and held to have waived his right to the same, although he had no actual notice of the proceeding; and the provision in said act to that effect is not in conflict with this section of the Constitution. *Ib.*

The proviso in section six of the act of January 27, 1853, "for opening and regulating roads and highways" (S. & C., 1291), declares a rule of evidence whereby a waiver, on the part of the land-owner, of his right to compensation, may be established, and does not conflict with this section of the Constitution. The rule contained in this proviso cannot be regarded either as a statute of limitation, whereby a right secured by the Constitution is barred immediately upon the accruing thereof, or as a statute declaring the forfeiture of private property. *Reckner v. Warner*, 22 Ohio St., 275.

But where real estate of a non-resident has been taken by the county commissioners for public use, as a county road, and it appears that the owner has not been notified, either in law or in fact, of the proceedings for its condemnation, the action of the county commissioners, as to him, is void, and he may maintain his action against them for the recovery of the compensation to which he may be entitled. *Badgely v. Com. of Hamilton Co.*, 1 Disney's Rep., 316.

(7) This provision applies to all the cases mentioned in the section. *Lamb v. Lane*, 4 Ohio St., 167.

The word jury in this section, as well as in the other places in the Constitution where it occurs, means a tribunal of twelve men, presided over by a court, and hearing the allegations, evidence and arguments of the parties. And they may be sent to inspect the premises. *Ib.*; *Work v. State*, 2 Ohio St., 307; *Shaver v. Starrett*, 4 Ohio St., 494.

An assessment may be made by viewers in the first instance, provided a right of appeal is given to a court in which they may be assessed by a constitutional jury. *Lamb v. Lane*, 4 Ohio St., 167; *In Re, Wells County Road*, 7 Ohio St., 16; *Reckner v. Warner*, 22 Ohio St., 275.

Under the Constitution of 1802, three disinterested freeholders of the county where the property is situated, appointed by a judge of a court of record, was a competent tribunal to make the assessment. *Willyard v. Hamilton*, 7 Ohio, 2 pt., 111; *Work v. State*, 2 Ohio St., 296-307; *Kramer v. C. & P. R. R. Co.*, 5 Ohio St., 140.

The owner of lands is entitled to a jury to assess damages sustained

by the establishment of a county road. As to whether the Constitution operated upon cases pending before legislation, *quere*. *In Re, Wells County Road*, 7 Ohio St., 16.

So much of the act passed March 5, 1839, entitled "An act to amend the act to provide for the vacation of town plats, and for other purposes," passed January 29, 1828 (1 Curwen, 249; S. & C., 1487), and of the act of February 19, 1840, entitled "An act to amend the act to provide for the vacating of town plats, and for other purposes" (1 Curwen, 30; S. & C., 1488), as authorize the assessment of damages, by way of compensation, without the intervention of a jury, is inconsistent with this Constitution and void. *Cincinnati v. Com. of Hamilton Co.*, 1 Disney's Rep., 4.

The act of January 27, 1853, entitled "An act for opening and regulating roads and highways" (S. & C., 1289), as amended April 8, 1856 (S. & C., 1301), is not repugnant to the provisions of the Constitution relating to trial by jury, as contained in sections five and nineteen of the first article. The right of appeal therein provided for, to the probate court, where a constitutional jury may be had, validates the statute; and the provision therein for an appeal bond, with sureties, conditioned for the payment of costs adjudged against the appellant, does not contravene the right of trial by jury, as guaranteed by the Constitution. *Reckner v. Warner*, 22 Ohio St., 275.

See further as to juries and the right thereto, Art. I, § 5, and Notes; Art. I, § 10, Note 5; Art. XIII, § 5, Note 6.

(8) In proceedings for the appropriation of private property to public uses, arising under the Constitution of 1802, the construction put upon that instrument by the Supreme Court, that it allowed the benefits conferred to be deducted from the value of the property appropriated, and that it did not require the assessment to be made in a court, or by a jury, will be adhered to by the present Supreme Court. *Kramer v. C. & P. R. R. Co.*, 5 Ohio St., 140.

An assessment upon lands fronting on a street, to reimburse the amount of compensation paid the owner for his other land taken for the use of the street, is authorized by the statute (S. & S., 834), and is not in violation of this constitutional provision. *Cleveland v. Wick*, 18 Ohio St., 303.

The provisions of this section and of section five of Article XIII—the one requiring compensation to be made without deduction for benefits, when property is appropriated to a public use, and the other providing for compensation irrespective of benefits, where it is taken by a corporation for a right of way—are, in legal effect, identical. When taken under either section, its fair market value in cash, at the time it is taken, must be paid to the owner; and the jury, in assessing the amount, have no right to consider or make any use of the fact that it has been increased in value by the proposal or construction of the improvement. *Giesy v. C. W. & Z. R. R. Co.*, 4 Ohio St., 309. (*See Art. XIII, § 5.*)

1 Debates, 164, 290-293; 2 Debates, 176-182, 220-240, 318, 634, 652, 653, 663, 664, 806, 826, 827, 857, 870.

SEC. 20. This enumeration of rights shall not be con-

strued to impair or deny others retained by the people ; and all powers, not herein delegated, remain with the people. (See *Const.* 1802, *Art.* VIII, § 28.)

Powers reserved to the people.

2 Debates, 231, 337, 464, 806, 827, 857, 870.

ARTICLE II.

LEGISLATIVE.

“ All of this article is devoted to the subject of legislative powers and duties. But it has respect to future legislative bodies, and future legislation under this Constitution, rather than to past, under the former Constitution.” *Allbyer v. State*, 10 Ohio St., 588-590—Sutliff, J.

SECTION 1. The legislative power of this state (1) shall be vested in a general assembly, (2) which shall consist of a senate, and house of representatives. (See *Const.* 1802, *Art.* I, § 1.)

In whom legislative power is vested.

(1) “ The same provision, in very nearly the same words, is found in the former Constitution. It will be observed that the provision is not that the legislative power, as conferred in the Constitution, shall be vested in the General Assembly, but that the legislative power of this state shall be vested. That includes all legislative power which the object and purposes of the state government may require, and we must look to other provisions of the Constitution to see how far, and to what extent, the legislative discretion is qualified or restricted. Hence the difference between the Constitution of the United States and a state Constitution, such as ours. In the former, we look to see if a power is expressly given ; in the latter, to see if it is denied or limited. Therefore, when the power of the Assembly to enact any particular law is drawn into question, the proper inquiry is, whether such an exercise of the legislative power is clearly prohibited by the Constitution. The grant of power being general, the question is as to the existence of a limitation arising from special prohibition.” *Baker v. Cincinnati*, 11 Ohio St., 534-542—Gholson, J. ; *Lehman v. McBride*, 15 Ohio St., 573-592 ; *Cincinnati v. McCann*, 21 Ohio St., 198-207. Such prohibition must either be found in express terms, or be clearly inferable, by necessary implication, from the language of the instrument, when fairly construed according to its manifest spirit and meaning. *Cass v. Dillon*, 2 Ohio St., 607 ; *Evans v. Dudley*, 1 Ohio St., 437 ; *Lehman v. McBride*, 15 Ohio St., 573-592. But the General Assembly, like other departments of government, exercise only delegated authority ; and any act passed by it not falling fairly within the scope of “ legislative authority,” is as clearly void as though expressly prohibited. *C. W. & Z. R. R. Co. v. Com. of Clinton Co.*, 1 Ohio St., 77.

The power to authorize assessments, as distinguished from taxes proper, is comprehended in the general grant of legislative power to the General Assembly. *Reeves v. Treas. of Wood Co.*, 8 Ohio St., 333.

The power to authorize assessments for the construction of free turnpike roads, and the opening of drains, as well as for the improve-

ment of streets and sidewalks, exists to the same extent under the present Constitution as under that of 1802. *Ib.*

“The enactment of laws for the inspection of commodities is the exercise of a legislative power recognized and sanctioned by long and unquestioned usage here and elsewhere, and is included in the general grant of legislative power conferred by the Constitution upon the General Assembly; and among the general, if not the invariable, incidents and characteristic features of this class of laws, is the imposition of a charge upon the owners or possessors of the commodities inspected, for the services of the inspector, although these services may have been rendered in *invitum* as to such owner or possessor. It is the legitimate exercise of governmental supervision over the business of the manufacturers and vendors of certain commodities, in order to protect the public, at home and abroad, against imposition and fraud, and, incidentally, to protect manufacturers and vendors themselves against unfounded and unjust claims of vendees and consumers, as well as against the consequences of their own short-sighted cupidity.”

Cincinnati Gas L. & C. Co. v. State, 18 Ohio St., 237-244—Brinkerhoff, J.

The acts of March 28, 1864 (61 O. L., 74), April 6, 1866 (63 O. L., 155), April 16, 1867 (64 O. L., 231), authorizing county commissioners, township trustees and city councils to levy a tax for the payment of bounties to volunteers, are authorized by the general grant of legislative power. *Cass Tp. v. Dillon*, 16 Ohio St., 38; *State v. Harris*, 17 Ohio St., 608; *State v. Wilkesville Tp.*, 20 Ohio St., 288; *State v. Richland Tp.*, *Ib.*; *State v. Circleville*, *Ib.*, 362.

(2) The power of the General Assembly to pass laws cannot be delegated by them to any other body, or to the people. *C. W. & Z. R. R. Co. v. Com. of Clinton Co.*, 1 Ohio St., 77. But an act authorizing county commissioners to subscribe to the capital stock of a railroad company (enacted under the Constitution of 1802), does not delegate legislative power in providing that the subscription shall not be made until the assent of a majority of the electors of the county is first obtained at an election held for that purpose. *Ib.*

1 Debates, 163-166, 168-171; 2 Debates, 141, 318, 560, 632, 664, 807, 831, 857, 870.

When
chosen.

SEC. 2. Senators and representatives shall be elected biennially, by the electors in the respective counties or districts, on the second Tuesday of October; their term of office shall commence on the first day of January next thereafter, and continue two years. (*See Const. 1802, Art. I, §§ 3, 5.*)

1 Debates, 171-179, 181-226; 2 Debates, 141-149, 318, 560, 632, 664, 807, 831, 857, 870.

Residence.

SEC. 3. Senators and representatives shall have resided in their respective counties, or districts, one year next preceding their election, unless they shall have been absent on the public business of the United States, or of this state. (*See Const. 1802, Art. I, §§ 4, 7.*)

1 Debates, 163, 217, 218, 226-228; 2 Debates, 142, 149, 215, 318, 560, 632, 664, 807, 831, 857, 870.

Eligibility.

SEC. 4. No person holding office under the authority of the United States, or any lucrative office under the authority

of this state, shall be eligible to, or have a seat in, the general assembly; but this provision shall not extend to township officers, justices of the peace, notaries public, or officers of the militia. (*See Const. 1802, Art. I, § 26.*)

1 Debates, 163, 257, 258; 2 Debates, 164, 182-185, 318, 567, 633, 664, 807, 831, 857, 870.

SEC. 5. No person hereafter convicted of an embezzlement of the public funds, shall hold any office in this state; nor shall any person, holding public money for disbursement, or otherwise, have a seat in the general assembly, until he shall have accounted for, and paid such money into the treasury. (*See Const. 1802, Art. I, § 28.*)

Who shall not hold office.

1 Debates, 163, 164, 258; 2 Debates, 164, 318, 567, 568, 577, 578, 633, 664, 807, 831, 857, 870.

SEC. 6. Each house shall be judge of the election, returns, and qualifications of its own members; a majority of all the members elected to each house shall be a quorum to do business; but a less number may adjourn from day to day, and compel the attendance of absent members, in such manner, and under such penalties, as shall be prescribed by law. (*See Const. 1802, Art. I, § 8.*)

Powers of each house.

1 Debates, 163, 228, 229; 2 Debates, 149, 150, 219, 220, 318, 560, 632, 664, 807, 831, 832, 857, 870.

SEC. 7. The mode of organizing the house of representatives, at the commencement of each regular session, shall be prescribed by law. (*See Const. 1802, Art. I, § 8.*)

Organization of house of representatives.

2 Debates, 214, 215, 634, 664, 807, 832, 857, 870.

SEC. 8. Each house, except as otherwise provided in this constitution, shall choose its own officers, may determine its own rules of proceeding, punish its members for disorderly conduct; and, with the concurrence of two-thirds, expel a member, but not the second time for the same cause; and shall have all other powers, necessary to provide for its safety, and the undisturbed transaction of its business. (*See Const. 1802, Art. I, § 11.*)

Rules and right of punishment and expulsion.

1 Debates, 163, 229; 2 Debates, 220, 240, 318, 560, 632, 664, 807, 832, 857, 870.

SEC. 9. Each house shall keep a correct journal of its proceedings, which shall be published. At the desire of any two members, the yeas and nays shall be entered upon the journal; and, on the passage of every bill, in either house, the vote shall be taken by yeas and nays, and entered upon the journal; and no law shall be passed, in either house, without the concurrence of a majority of all the members elected thereto. (*See Const. 1802, Art. I, § 9.*)

Journal and yeas and nays.

No bill can become a law without receiving the number of votes required by the Constitution; and if it were found by an inspection of the legislative journals, that what purports to be a law upon the statute book, was not passed by the requisite number of votes, it might possibly be the duty of the courts to treat it as a nullity. But it does not follow that an act that was passed by a constitutional majority is invalid, because, in its consideration, the Assembly did not strictly observe the mode of procedure prescribed by the Constitution. There

are provisions in that instrument that are directory in their character, the observance of which by the Assembly is secured by their sense of duty and official oaths, and not by any supervisory power of the courts. *Fordyce v. Godman*, 20 Ohio St., 1-17; *Miller v. State*, 3 Ohio St., 475.

"The legislative journals furnish the appropriate evidence on the question whether a bill has been passed by the requisite number of votes. Were it otherwise, a bill might become a law without receiving the number of votes required by the Constitution. A single presiding officer might by his signature give the force of law to a bill which the journal of the body over which he presides, and which is kept under the supervision of the whole body, shows not to have been voted for by the constitutional number of members. The plain provisions of the Constitution are not to be thus nullified, and the evidence which it requires to be kept under the supervision of the collective body, must control when a question arises as to the due passage of a bill." *Fordyce v. Godman*, 20 Ohio St., 1-17—Scott, J.; and see *State v. Moffatt*, 5 Ohio, 358; 3 Ohio St., 475.

In the absence of all showing to the contrary, a law will be presumed to have been passed by the requisite number of votes. *Miller v. State*, 3 Ohio St., 475; *Steamboat Northern Indiana v. Millikin*, 7 Ohio St., 383.

1 Debates, 163, 229, 230; 2 Debates, 150, 318, 560, 577, 632, 664, 807, 825, 832, 858, 870.

Right of members to protest.

SEC. 10. Any member of either house shall have the right to protest against any act, or resolution thereof; and such protest, and the reasons therefor, shall, without alteration, commitment, or delay, be entered upon the journal. (*See Const. 1802, Art. I, § 10.*)

1 Debates, 163, 230, 232; 2 Debates, 150, 214, 318, 560, 633, 664, 807, 832, 858, 870.

Vacancies in either house, how filled.

SEC. 11. All vacancies which may happen in either house shall, for the unexpired term, be filled by election, as shall be directed by law. (*See Const. 1802, Art. I, § 12.*)

1 Debates, 163, 232; 2 Debates, 150, 318, 560, 633, 664, 807, 832, 858, 870.

Privilege of members from arrest, and of speech.

SEC. 12. Senators and representatives, during the session of the general assembly, and in going to, and returning from the same, shall be privileged from arrest, in all cases, except treason, felony, or breach of the peace; and for any speech, or debate, in either house, they shall not be questioned elsewhere. (*See Const. 1802, Art. I, § 13.*)

1 Debates, 163, 232; 2 Debates, 318, 560, 633, 664, 807, 832, 858, 870.

When session to be public.

SEC. 13. The proceedings of both houses shall be public, except in cases which, in the opinion of two-thirds of those present, require secrecy. (*See Const. 1802, Art. I, § 15.*)

1 Debates, 163, 232, 233; 2 Debates, 150, 318, 560, 633, 664, 807, 832, 858, 870.

Power of adjournment.

SEC. 14. Neither house shall, without the consent of the other, adjourn for more than two days, Sundays excluded; nor to any other place than that, in which the two houses shall be in session. (*See Const. 1802, Art. I, § 15.*)

1 Debates, 163, 233; 2 Debates, 150, 318, 560, 633, 664, 807, 832, 858, 870.

SEC. 15. Bills may originate in either house; but may be altered, amended, or rejected in the other. (*See Const. 1802, Art. I, § 16.*)

Where bills shall originate.

1 Debates, 163, 233; 2 Debates, 150, 318, 560, 633, 664, 807, 832, 858, 870.

SEC. 16. Every bill shall be fully and distinctly read, on three different days, unless, in case of urgency, three-fourths of the house, in which it shall be pending, shall dispense with this rule. (1) No bill shall contain more than one subject, which shall be clearly expressed in its title; (2) and no law shall be revived, or amended, unless the new act contain the entire act revived, or the section or sections amended; (3) and the section, or sections, so amended, shall be repealed. (4) (*See Const. 1802, Art. I, § 17.*)

Bills to be read three times.

Not to contain more than one subject.

Acts revived or amended.

(1) This section does not require that every amendment to a bill shall be read three times. *Miller v. State*, 3 Ohio St., 475. (See next note.)

(2) This provision was incorporated into the Constitution for the purpose of making it a permanent rule of the Houses, and to operate only on bills in their progress through the General Assembly. It is directory only, and the supervision of its observance must be left to the General Assembly. *Pim v. Nicholson*, 6 Ohio St., 176. The same is equally true of the provision that "every bill shall be fully and distinctly read on three different days." *Miller v. State*, 3 Ohio St., 475-483.

Every reasonable intendment is to be made in favor of the proceedings of the Legislature. It is not to be presumed that the Assembly, or either House of it, has violated the Constitution. When, therefore, it appears by the journals that a bill was amended by striking out all after the enacting clause and inserting a "new bill," so called, it cannot be presumed that the matter inserted was upon a different subject from that stricken out; especially when the matter inserted is consistent with the title borne by the bill before such amendment. This is the more obvious, since the Constitution provides that "no bill shall contain more than one subject, which shall be clearly expressed in its title." Nor does the fact that the inserted matter is called a "new bill," prove that it was not an amendment. *Miller v. State*, 3 Ohio St., 475.

(3) "This provision was inserted, mainly, to prevent improvident legislation; and with that view, as well as for the purpose of making all acts, when amended, intelligible, without an examination of the statute as it stood prior to the amendment, it requires every section, which is intended to supersede a former one, to be fully set out. No amendments are to be made by directing specified words or clauses to be stricken from or inserted in a section of a prior statute which may be referred to; but the new act must contain the section as amended—not the section or sections which it proposes to amend, but the section or sections in full, as it purports to amend them. That is, it requires not a recital of the old section, but a full statement in terms of the new one." *Lehman v. McBride*, 15 Ohio St., 573-602, 603—Scott, J.

(4) This clause is directory only to the General Assembly, and was

not intended to abrogate the long-established rule as to repeals by implication. *Lehman v. McBride*, 15 Ohio St., 573.

1 Debates, 163, 233, 297; 2 Debates, 150, 151, 318, 560, 561, 633, 664, 807, 825, 832, 858, 870.

To be signed
by presiding
officers.

SEC. 17. The presiding officer of each house shall sign, publicly in the presence of the house over which he presides, while the same is in session, and capable of transacting business, all bills and joint resolutions passed by the general assembly. (*See Const. 1802, Art. I, § 17.*)

1 Debates, 293; 2 Debates, 182, 318, 634, 664, 807, 832, 858, 870.

Style of laws.

SEC. 18. The style of the laws of this state shall be, "*Be it enacted by the General Assembly of the State of Ohio.*" (*See Const. 1802, Art. I, § 18.*)

1 Debates, 163, 171, 233; 2 Debates, 318, 561, 633, 664, 807, 832, 858, 870.

Exclusion
from office.

SEC. 19. No senator or representative shall, during the term for which he shall have been elected, or for one year thereafter, be appointed to any civil office under this state, which shall be created or the emoluments of which shall have been increased, during the term for which he shall have been elected. (*See Const. 1802, Art. I, § 20.*)

1 Debates, 163, 234-236; 2 Debates, 151, 318, 562, 563, 577, 633, 664, 807, 832, 858, 870.

Term of
office, and
compensa-
tion of offi-
cers in cer-
tain cases.

SEC. 20. The general assembly, in cases not provided for in this constitution, shall fix the term of office and the compensation of all officers; (1) but no change therein shall affect the salary (2) of any officer during his existing term, unless the office be abolished.

(1) The act of May 1, 1862 (59 O. L., 104), prescribing the fees of county auditors, "is not in conflict with this section nor with section twenty-six of this article." *Cricket v. State*, 18 Ohio St., 9.

"The duty enjoined by this section in regard to fixing the compensation of officers, does not require the General Assembly to fix the sum or amount which each officer is to receive, but only requires that it shall prescribe or fix the rule by which such compensation is to be determined." *Ib.* 21—White, J.

The act of May 4, 1869 (66 O. L., 80), authorizing the courts to appoint trustees to carry out the provisions of the act and to fix their compensation, is not in conflict with this provision. The trustees, for whose appointment it provides, are not public officers within the meaning of this provision. *Walker v. Cincinnati*, 21 Ohio St., 14.

"This clause cannot be regarded as comprehending more than such officers as may be created to aid in the permanent administration of the government. It cannot include all the agencies which the General Assembly may authorize municipal and other corporations to employ for local and temporary purposes." *Ib.* 51—Scott, C. J.

The case of a clerk of the court holding his office by appointment to fill a vacancy, is one of the cases in which the Constitution has not fixed the term of office, but left that to be done by the Legislature. *State v. Neibling*, 6 Ohio St., 40-43—Bartley, C. J.

(2) It is manifest from the change of expression in the two clauses of the section, that the word "salary" was not used in a general sense, embracing any compensation fixed for an officer, but in its limited sense, of an annual or periodical payment for services—a payment dependent on the time, and not on the amount of the service rendered. Where the compensation is to be ascertained by a percentage on the amount of money received and disbursed, it is not a salary within the meaning of this section. *Thompson v. Phillips*, 12 Ohio St., 617, 618.

1 Debates, 163, 233, 234; 2 Debates, 151, 318, 561, 562, 577, 633, 663, 664, 807, 832, 858, 870.

SEC. 21. The general assembly shall determine, by law, before what authority, and in what manner, the trial of contested elections shall be conducted.

A specific mode of contesting elections in this state having been provided by statute, according to this requirement of the Constitution, that mode alone can be resorted to, in exclusion of the common law mode of inquiry by proceedings in *quo warranto*. The statute which gives this special remedy and prescribes the mode of its exercise binds the state, as well as individuals. *State v. Marlow*, 15 Ohio St., 114.

2 Debates, 228, 318, 563, 564, 577, 633, 664, 807, 832, 858, 870.

SEC. 22. No money shall be drawn from the treasury, except in pursuance of a specific appropriation, made by law; and no appropriation shall be made for a longer period than two years. (See *Const.* 1802, *Art. I*, § 21.)

No officer of the state can enter into any contract, except in cases specified in the Constitution, whereby the General Assembly will, two years after, be bound to make appropriations, either for a particular object or a fixed amount; the power and the discretion, intact, to make appropriations, in general, devolving on each biennial General Assembly, and for the period of two years. *State v. Medbery*, 7 Ohio St., 522.

"The sole power of making appropriations of the public revenue is vested in the General Assembly. It is the setting apart and appropriating by law a specified amount of the revenue for the payment of the liabilities which may accrue or have accrued. No claim against the state can be paid, no matter how just or how long it may have remained overdue, unless there has been a specific appropriation made by law to meet it. By virtue of this power of appropriation, the General Assembly exercise their discretion in determining, not only what claims against, or debts of the state shall be paid; but the amount of expenses which may be incurred. If they authorize expenses or debts to be incurred, without an appropriation to pay them, and the expenses are incurred, those expenses create a debt against the state, and it must remain such, until payment under an appropriation afterward made. The General Assembly usually, however, provide for the current expenses for a period not exceeding two years, out of the incoming revenues, by making appropriations of a sufficient amount of money to pay the expenses during that period, and provide by law for

fore not inconsistent with the present Constitution of the state, by reason of its not having a uniform operation throughout the state, so as to be repealed by implication. *Ruffner v. Com. of Hamilton Co.*, 1 Disney's Rep., 39, 197.

Nor is the act of March 7, 1835 (S. & C., 444), to amend the act entitled "An act for the more effectual punishment of certain offenses in the county of Hamilton," so in conflict with this section as to be thereby abrogated. This section had, at the adoption of the Constitution, only a prospective, and not a retrospective, effect upon legislation. *Allbyer v. State*, 10 Ohio St., 588.

The act of May 1, 1862 (59 O. L., 104), "prescribing the fees of county auditors," is not in conflict with this section. *Cricket v. State*, 18 Ohio St., 9. This section clearly was not intended to require that an act providing a new rule of compensation of officers subsequently coming into office should be invalid, unless it also applied to the future services of existing officers. *Ib.*, 22.

The act of April 6, 1870 (67 O. L., 36), "limiting the compensation of certain officers therein named," and the supplemental act of April 12, 1871 (68 O. L., 58), and which can only operate in Hamilton county, are not laws of a general, but of a local nature, and are therefore not in conflict with this section. *State v. Judges*, 21 Ohio St., 1.

An act of the General Assembly that operates only upon all cities in the state of the first class having, at the last federal census, less than one hundred thousand inhabitants, does not contravene this section. *Welker v. Potter*, 18 Ohio St., 85.

The act of the General Assembly of April 9, 1856, "to restore to the court of common pleas the jurisdiction of minor offenses in certain counties in the state" (53 O. L., 107), being general in its nature, and yet limited in express terms to a part of the counties of the state, is in conflict with this provision. *Kelley v. State*, 6 Ohio St., 269. The courts of common pleas in Ohio being an organization of a general nature, and having by law jurisdiction over every citizen, the laws which relate to and regulate their jurisdiction and organization are laws of a general nature, and are imperatively required to have a uniform operation throughout the state. *Ib.*, 272. (See Art. IV, § 8. Note.)

(2) "Of the term 'uniform operation,' it would be difficult to give any satisfactory general definition. It is not confined to the taking effect and being a law throughout the state, for every law may be said to have that operation. Is it sufficient that it may operate uniformly at the discretion of different and distinct bodies throughout the state? In other words, is a mere power to act upon subject matters, in their nature distinct and different, though it may be of a like kind, the uniform operation of a law? Does the operation of the law consist in its effect on those who, by its means, are affected in person or estate, or in the grant of a power to produce the effect? If a like power be given to bodies created for the purpose in all the counties of the state; but the exercise of the power depends on the discretion of those bodies, and in some counties it may be exercised, and in some it may not; in some counties it may be exercised to a certain extent, and in others to a different extent, involving heavy burdens upon the people, or light, as the discretion of those acting under the power shall determine. Does

"There appears to be a clear distinction between a general law and a law of a general nature. It might be in the power of the Legislature to confer on many laws the form of a general law; but the nature of a law, whether general or local and special, is inherent in the law itself, and a matter which the Legislature can neither give nor take away by the manner in which it is passed or published. Whether, therefore, any law be a law of a general nature, will depend on the provisions of the law, and be a matter of judicial construction. The laws of a general nature are intended to have a uniform operation throughout the state. Laws, therefore, which from their nature cannot operate uniformly throughout the state, cannot be embraced under the expression of laws of a general nature. The Legislature may provide, by general laws, for matters in their nature local. Indeed, as to some matters, the Legislature, it has been supposed, are required so to do by the Constitution, as in the case of the organization of cities and villages. However general some of the laws on this subject are in form, they are in their nature essentially special, and must of necessity be local and partial in their operation. Except as to some specified matters, the Legislature is not prohibited from passing local and special laws, as to matters in their nature local and special. The prohibition is not to confine a law, in its nature general, to a particular locality; or not to except from the operation of a law of a general nature a particular locality. If, therefore, any subject matter is in its nature local, requiring special legislation, this section does not prohibit special legislation on that subject. The Legislature is not required to provide for every local and special matter by general laws, whenever it can be done, but are prevented from restricting the operations of laws of a general nature to any part of the state less than the whole. Such laws, when enacted, are to have a uniform operation throughout the state; their operation cannot be confined to one county or to fifty counties. Laws conferring power on the county commissioners to erect public buildings, cannot be considered laws of a general nature, having a uniform operation throughout the state. Laws regulating those matters in the government of the counties of a state, in their nature different, depending on taste and discretion, as to which no uniform rule can be prescribed, must be, in their nature, special. In the absence of any express provision of the Constitution, that the counties of the state shall be governed alike, by the same general laws, I can see no reason why special laws for the purpose may not be passed. If special laws on the subject can be passed, then no general law that is passed is, necessarily, a law of a general nature. Undoubtedly, laws having for their object the regulation of the counties of the state, may be of a general nature, and have a uniform operation. In the same act, one part may contain a law of that description, and another part a law in its nature special."

Ruffner v. Com. of Hamilton Co., 1 Disney's Rep., 196-202, 205—Gholson, J.

The local act of February 24, 1848, "relating to the duties and powers of the county commissioners of Hamilton county" (Local Statutes, vol. 46, 267), prescribing the mode in which the commissioners of that county shall make contracts, is not of a general nature, and is there-

fore not inconsistent with the present Constitution of the state, by reason of its not having a uniform operation throughout the state, so as to be repealed by implication. *Ruffner v. Com. of Hamilton Co.*, 1 Disney's Rep., 39, 197.

Nor is the act of March 7, 1835 (S. & C., 444), to amend the act entitled "An act for the more effectual punishment of certain offenses in the county of Hamilton," so in conflict with this section as to be thereby abrogated. This section had, at the adoption of the Constitution, only a prospective, and not a retrospective, effect upon legislation. *Allbyer v. State*, 10 Ohio St., 588.

The act of May 1, 1862 (59 O. L., 104), "prescribing the fees of county auditors," is not in conflict with this section. *Cricket v. State*, 18 Ohio St., 9. This section clearly was not intended to require that an act providing a new rule of compensation of officers subsequently coming into office should be invalid, unless it also applied to the future services of existing officers. *Ib.*, 22.

The act of April 6, 1870 (67 O. L., 36), "limiting the compensation of certain officers therein named," and the supplemental act of April 12, 1871 (68 O. L., 58), and which can only operate in Hamilton county, are not laws of a general, but of a local nature, and are therefore not in conflict with this section. *State v. Judges*, 21 Ohio St., 1.

An act of the General Assembly that operates only upon all cities in the state of the first class having, at the last federal census, less than one hundred thousand inhabitants, does not contravene this section. *Welker v. Potter*, 18 Ohio St., 85.

The act of the General Assembly of April 9, 1856, "to restore to the court of common pleas the jurisdiction of minor offenses in certain counties in the state" (53 O. L., 107), being general in its nature, and yet limited in express terms to a part of the counties of the state, is in conflict with this provision. *Kelley v. State*, 6 Ohio St., 269. The courts of common pleas in Ohio being an organization of a general nature, and having by law jurisdiction over every citizen, the laws which relate to and regulate their jurisdiction and organization are laws of a general nature, and are imperatively required to have a uniform operation throughout the state. *Ib.*, 272. (*See Art. IV, § 8. Note.*)

(2) "Of the term 'uniform operation,' it would be difficult to give any satisfactory general definition. It is not confined to the taking effect and being a law throughout the state, for every law may be said to have that operation. Is it sufficient that it may operate uniformly at the discretion of different and distinct bodies throughout the state? In other words, is a mere power to act upon subject matters, in their nature distinct and different, though it may be of a like kind, the uniform operation of a law? Does the operation of the law consist in its effect on those who, by its means, are affected in person or estate, or in the grant of a power to produce the effect? If a like power be given to bodies created for the purpose in all the counties of the state; but the exercise of the power depends on the discretion of those bodies, and in some counties it may be exercised, and in some it may not; in some counties it may be exercised to a certain extent, and in others to a different extent, involving heavy burdens upon the people, or light, as the discretion of those acting under the power shall determine. Does

the operation of the law consist in the grant of power or its exercise? If in the latter, it seems clear that such a law is not one having a uniform operation throughout the state. From its nature, it cannot have a uniform operation; and if so, then it cannot be a law of a general nature, within the meaning of the Constitution. It may be a general law, because, in general terms, and by a general description, applicable to all, it confers powers upon distinct bodies of men; but as these bodies of men may, and indeed, in many cases, of necessity must, exercise the power differently, and to a different extent, and with different effect on those to be affected, it is not a law of a general nature."

Ruffner v. Com. of Hamilton Co., 1 Disney's Rep., 196-204—Gholson, J.

(3) In *C. W. & Z. R. R. Co. v. Com. of Clinton Co.*, 1 Ohio St., 77-87, 88, 89, Ranney, J., says that no one denies the proposition that the General Assembly cannot surrender any portion of the legislative authority with which it is invested, or authorize its exercise by any other person or body; that this inability arises no less from the general principle applicable to every delegated power requiring knowledge, discretion] and rectitude in its exercise, than from the positive provisions of the Constitution itself; that in determining whether a legislative act contravenes this clause or not, the true distinction is between the delegation of the power to make the law, which necessarily involves a discretion as to what it shall be, and conferring an authority or discretion as to its execution, to be exercised under and in pursuance of the law; that the first cannot be done; that to the latter no valid objection can be made. In this case it was accordingly held, that an act authorizing the commissioners of a county to subscribe to the capital stock of a railroad company does not delegate legislative power or contravene the Constitution of 1802 (under which it was passed), nor the present Constitution, in providing that the subscription shall not be made until the assent of a majority of the electors of the county is first obtained at an election held for that purpose.

The principle in such case is, that the act takes effect as soon as passed, and that, therefore, this provision of the Constitution does not apply, though the act provides for a vote of the people, as a condition precedent to the subscription. *Cass v. Dillon*, 2 Ohio St., 607; *Thompson v. Kelley*, *Ib.* 647. The same rule is applicable to township subscriptions to the capital stock of railroad companies. *S. & I. R. R. Co. v. North Tp.*, 1 Ohio St., 105. Or of plankroad companies. *Loomis v. Spencer*, *Ib.* 153. And to an act providing for a vote upon the question of the removal of a county seat, as required by Art. II, Sec. 30, in which act are contained certain sections, authorizing the election, prescribing the manner of conducting it, and of making the returns, recording the results, etc. *State v. Com. of Perry Co.*, 5 Ohio St., 497; *Noble v. Com. of Noble Co.*, *Ib.* 524. And to a statute which requires a preliminary vote of the electors of a township, before an assessment for the purpose of paying for lands purchased for a township cemetery is made by the trustees. *Paris Tp. v. Cherry*, 8 Ohio St., 564.

1 Debates, 164, 259; 2 Debates, 215-219, 221-228, 318, 568, 578, 579, 633, 664, 807, 832, 858, 870.

Election and appointment of officers and the filling of vacancies.

Vote for U.S. senator to be viva voce.

SEC. 27. The election and appointment of all officers, (1) and the filling of all vacancies, not otherwise provided for by this constitution, or the constitution of the United States, shall be made in such manner as may be directed by law; (2) but no appointing power (3) shall be exercised by the general assembly, except as prescribed in this constitution, and in the election of United States senators; and in these cases the vote shall be taken "*viva voce*."

(1) Emolument is a usual but not a necessary element to constitute an office. Authority and power relating to the public interests, conferred by statute, and which may be vested in a board or individuals by election or the appointing power of the state, create an office. *State v. Kennon*, 7 Ohio St., 547.

(2) The General Assembly may by law direct the manner in which all offices existing or created by law or vacancies therein shall be filled by appointment, except in cases provided by the Constitution. Directing by law the manner in which an appointment shall be made, and making an appointment, are the exercise of two different and distinct powers; the one prescribing how an act shall be done, being legislative; and the other, doing the act, being administrative. *Ib.* 546.

(3) "The phrase 'appointing power,' as here used, is one of no ambiguous signification. When employed in reference to matters pertaining to government, or to the distribution of the powers of government, it means the power of appointment to office—the power to select and indicate by name individuals to hold office, and to discharge the duties and exercise the powers of officers. Theirs is a public duty, charge and trust, conferred by public authority, for public purposes of a very weighty and important character. Their duties, their charge and trust, are not transient, occasional or incidental, but durable, permanent and continuous." *Ib.* 556—Brinkerhoff, J.

The statutes of April 12, 1858 (55 O. L., 122, 136), which provide for the creation of a board, authorizing it to appoint commissioners of the State House, and the directors of the penitentiary of the state, and to fill all vacancies which might occur in the offices of directors or State House commissioners, and authorizing such board or a majority to remove any director of the penitentiary for causes specified, or which might by the board be deemed sufficient, created offices; and conceding that the General Assembly could provide for the creation of such board and offices, yet the General Assembly could not exercise the power of appointing the officers of such board without exercising "appointing power," which is forbidden by the Constitution. The exercise of the power of appointment and removal of state officers, and the filling of vacancies which may occur in state offices, is a high public function and trust, and not a private, or casual, or incidental agency; and the officers of a board so created by statute to exercise these public functions, are vested with official state power, and hold and exercise a public franchise and office. *Ib.* 547.

The conferring of authority on the judges of the Superior Court of Cincinnati to appoint trustees to carry out the purpose of the act of May 4, 1869 (66 O. L., 80), the construction of a railroad by that city,

is not the exercise of appointing power by the General Assembly, which this section forbids. It is not the creation of a new office, but the annexing of a new duty to an existing office. *Walker v. Cincinnati*, 21 Ohio St., 15. (See Art. VII, § 2, Note.)

1 Debates, 164, 259, 260 ; 2 Debates, 164, 318, 568, 569, 578, 590, 633, 664, 807, 832, 858, 870.

SEC. 28. The general assembly shall have no power to pass retroactive laws,(1) or laws impairing the obligation of contracts ;(2) but may, by general laws, authorize courts to carry into effect, upon such terms as shall be just and equitable,(3) the manifest intention (4) of parties, and officers,(5) by curing omissions, defects, and errors, in instruments and proceedings, arising out of their want of conformity with the laws of this state.(6) (See Const. 1802, Art. VIII, § 16.) Retroactive laws.

(1) "The words 'retrospective' and 'retroactive,' as applied to laws, seem to be synonymous. Justice Story thus defines a retrospective law: 'Upon principle, every statute which takes away or impairs vested rights, acquired under existing laws, or creates a new obligation, imposes a new duty, or attaches a new disability, in respect to transactions or considerations already past, must be deemed retrospective.'" *Rairden v. Holden*, 15 Ohio St., 207-210—Brinkerhoff, C. J.

A statute purely remedial in its operation on pre-existing rights, obligations, duties and interests, is not within the mischiefs against which this clause of the Constitution was intended to guard, and is not, therefore, within a just construction of its terms. *Green Tp. v. Campbell*, 16 Ohio St., 11; *Rairden v. Holden*, 15 Ohio St., 207; *Goshorn v. Purcell*, 11 Ohio St., 641; *Butler v. Toledo*, 5 Ohio St., 225; *Acheson v. Miller*, 2 Ohio St., 203; *Trustees of C. F. R. E. A. v. McCaughy*, Ib., 152; *Kearny v. Buttles*, 1 Ohio St., 362; *Bartholomew v. Bentley*, Ib., 37; *Lewis v. McElvain*, 16 Ohio, 347; *Johnson v. Bentley*, Ib., 97; *Towsey v. Avery*, 11 Ohio, 90; *Hays v. Armstrong*, 7 Ohio, 1 pt., 248.

Statutes affecting substantial interests, and rights of property, have a prospective operation only, unless the contrary intention is clearly expressed. *Kelley v. Kelso*, 5 Ohio St., 198.

The acts of March 28, 1864 (61 O. L., 74), April 6, 1866 (63 O. L., 188), and April 16, 1867 (64 O. L., 231), providing for the payment of bounties to volunteers, have been declared not repugnant to this provision. *State v. Richland Tp.*, 20 Ohio St., 362; *State v. Wilkesville Tp.*, Ib., 288; *State v. Harris*, 17 Ohio St., 608; *Cass Tp. v. Dillon*, 16 Ohio St., 39.

Nor is the act of March 24, 1864 (61 O. L., 57), "supplementary to the act entitled 'An act to provide for the locating, establishing and constructing ditches, drains and water-courses.'" *Miller v. Graham*, 17 Ohio St., 1. Nor the act of April 7, 1854 (4 Curwen, 2571; S. & C., 619), concerning suits on the bond of executors and administrators. *Rairden v. Holden*, 15 Ohio St., 207.

(2) The fifth section of the act of March 2, 1853 (51 O. L., 529), "to provide for the removal of the county seat of Perry county from the town of New Lexington to the town of Somerset," imposes upon the County of Perry a forfeiture of subsisting rights acquired under a legal

contract, in the event of a majority vote against the removal of the seat of justice, and is, therefore, unconstitutional. *State v. Com. of Perry Co.*, 5 Ohio St., 497.

But the sixth section of the act of April 29, 1854 (52 O. L., 177), "to provide for the permanent location of the seat of justice of Noble county, by the legal voters thereof, and for the erection of public buildings therein," provides only for the natural and necessary exigencies arising from fixing the county seat either at Olive or Sarahsville; and which exigencies must have been in the contemplation of the voters, whether provided for by the act or not. This act is not in conflict with this provision of the Constitution. *Noble v. Com. of Noble Co.*, 5 Ohio St., 524.

The act of May 3, 1852 (50 O. L., 263), in relation to plankroad and turnpike companies, in so far as it undertakes to impose upon stockholders, without their assent, individual liabilities not imposed by their charters, or by the laws under which they have been organized, is a law impairing the validity of the stockholders' contract with the company, and, therefore, unconstitutional. *Ireland v. Palestine T. P. Co.*, 19 Ohio St., 369.

See also, as to the obligation of contracts, *Phillips v. Dugan*, 21 Ohio St., 466; *Smith v. McKinney*, 22 Ohio St., 200. As to the power of the General Assembly to alter, revise and amend the charters of incorporated companies, see *Const.* 1802, *Art. VIII*, § 16, *Notes*.

(3) This provision is permissive and not mandatory, and it still remains a question for the courts to determine under what circumstances, on what principles of equity, they will give effect to an instrument or conveyance which is invalid by law. *Hout v. Hout*, 20 Ohio St., 119.

(4) "The intention must be manifest; but how manifested is not expressed. The courts, under a direction to find the intention, with a view to the correction of an omission or defect, in analogy to like cases, would not act unless the intention was manifest; and in view of this principle of law, it is probable the expression was used. It may happen that a mere inspection of the imperfect instrument will show what is the omission, defect or error, and make manifest the intention of the parties. But giving the strictest meaning to the expression, 'manifest intention,' as applied to a written instrument, we think the courts are not confined to a mere inspection of the instrument, as to which the omission, defect or error is alleged to exist, but are, at least, entitled to be placed in the same position as if called on to construe and give effect to a perfect instrument. The object being to ascertain if there be an omission, defect or error in the instrument, which has prevented the manifest intention of the parties from being carried into effect, the court may look to the subject matter, the connection of the parties with it, and surrounding circumstances at the time of the execution of the instrument." *Goshorn v. Purcell*, 11 Ohio St., 641-647, 648—Gholson, J.

(5) "The language of this proviso extends not only to omissions of officers in proceedings connected with the execution of deeds, but to omissions, defects and errors in deeds—to the omissions, not only of officers, but of parties. We should, therefore, look rather to the principle of justice and right, which the rule was intended to

enforce by an application to past transactions, than to particular instances in which a like application had been made, though historically connected with the adoption of the rule." *Ib.*, 650.

(6) "It is obvious that the instrument or proceeding must be one which, had there been no omission, defect or error, would have carried into effect the intention of the parties or officers. If the instrument or proceedings be such that, in the absence of any omission, defect or error, it would have been inoperative, then it cannot be regarded as within the meaning of the proviso. This is shown from the requisition, that the omission, defect or error must arise from the want of conformity of the instrument or proceeding with the laws of the state. An instrument or proceeding which, having no omission, defect or error, would still not conform with the laws of the state, and, therefore, not carry into effect the intention, cannot be one of those intended. The proviso proceeds on the assumption that the instrument or proceeding, but for the omission, defect or error, would have conformed to the laws, and therefore have carried into effect the intention of the parties. It, therefore, does not extend to any instrument or proceeding not authorized by the laws of the state, as a valid and effectual expression of the intention of the parties. It does not authorize the General Assembly to give power or capacity to parties, not possessed when any instrument or proceeding was made or had. An attempt to do this would come within the prohibition against retroactive laws." *Ib.*, 646, 647.

"The principle, in view of which the language of the proviso should be construed, would extend that language to cases where parties competent to carry their intention into effect, by an instrument or proceeding made or had in conformity with the laws of the state, attempt to do so, but fail on account of an omission, defect or error; and the intention being manifest, justice and equity require that it should not be defeated by such omission, defect or error. The parties must be competent, their intention must be manifest, it must be evinced by some act, by some instrument or proceeding, though imperfect from a want of conformity with the law, and the relief must be upon just and equitable terms." *Ib.*, 650.

In 1828, L., the wife of G., having a fee simple estate in land, joined with her husband in a deed intending to convey her estate to F. By mistake, her name was omitted in the granting clause of the deed. In 1857, the General Assembly passed an act authorizing the court to correct such a mistake in the deed of a married woman, though occurring before the passage of the act. Held, that the proviso in this section authorized such an enactment. *Goshorn v. Purcell*, 11 Ohio St., 641; s. c. 2 Disney's Rep., 90; *Miller v. Hine*, 13 Ohio St., 565; *Smith v. Turpin*, 20 Ohio St., 478.

1 Debates, 164, 263-270, 273-284; 2 Debates, 165-175, 185-210, 240-281, 286, 318, 569, 589-593, 596, 597, 605-632, 664, 808, 832, 858, 870.

SEC. 29. No extra compensation shall be made to any officer, public agent, or contractor, after the service shall have been rendered, or the contract entered into; nor shall any money be paid, on any claim, the subject matter of which shall not have been provided for by pre-existing law,

No extra compensation.

unless such compensation, or claim, be allowed by two-thirds of the members elected to each branch of the general assembly.

At the time of the raid through Ohio by the rebel forces, led by John H. Morgan, in 1863, and their destruction of private property, there was no subsisting law requiring or authorizing the payment by the state of the damages thereby occasioned to individuals; and therefore, under the provisions of this section, claims for such damages can not be paid out of the state treasury till allowed by the concurrent votes of two-thirds of the members elected to each branch of the General Assembly. Upon the question whether such claims have been allowed by the number of members required by the Constitution, the legislative journals must furnish the appropriate evidence. *Fordyce v. Godman*, 20 Ohio St., 1.

1 Debates, 164, 284, 285; 2 Debates, 318, 569-574, 578, 597, 633, 664, 808, 832, 858, 870.

New
counties.

SEC. 30. No new county shall contain less than four hundred square miles of territory, nor shall any county be reduced below that amount; and all laws creating new counties, changing county lines, or removing county seats, shall, before taking effect, be submitted to the electors of the several counties to be affected thereby, at the next general election after the passage thereof, and be adopted by a majority of all the electors voting at such election, in each of said counties; but any county now or hereafter containing one hundred thousand inhabitants, may be divided, whenever a majority of the voters residing in each of the proposed divisions shall approve of the law passed for that purpose; but no town or city within the same shall be divided, nor shall either of the divisions contain less than twenty thousand inhabitants. (*See Const. 1802, Art. VII, § 3.*)

The power to make new counties, and to change county lines, existed under the former Constitution. *State v. Choate*, 11 Ohio, 511.

The act to erect the county of Noble, passed March 11, 1851, is not inconsistent with this Constitution, nor repealed by it. *State v. Dudley*, 1 Ohio St., 437. Nor does the act of March 29, 1866 (63 O. L., 58), "to provide for the removal of the seat of justice of Wood county," contravene this provision. *Peck v. Weddell*, 17 Ohio St., 271; *Powers v. Reed*, 19 Ohio St., 189. And see Art. II, Sec. 28, Note 2.

2 Debates, 210, 211, 220, 240, 318, 574-581, 590, 633, 634, 653, 663, 664, 808, 832, 858, 870.

Compensa-
tion of mem-
bers and offi-
cers of the
general
assembly.

SEC. 31. The members and officers of the general assembly shall receive a fixed compensation, to be prescribed by law, and no other allowance or perquisites, either in the payment of postage or otherwise; and no change in their compensation shall take effect during their term of office.

1 Debates, 293-297; 2 Debates, 211-214, 318, 634, 653, 663, 664, 808, 833, 858, 870.

SEC. 32. The general assembly shall grant no divorce, nor exercise any judicial power not herein expressly conferred.

Divorces
and judicial
power.

The Constitution of 1802 contained no such prohibition; but in *Bingham v. Miller*, 17 Ohio, 445, it was held that the Legislature had no power, by a special act, to grant a divorce, that being the exercise of a judicial, not a legislative function—a function not granted to the Legislature by the Constitution; but that body having exercised the power for more than forty years, to avoid the consequences which would result from declaring all those void which had been granted by the Legislature—rendering illegitimate the issue of second marriages—the court would pronounce them valid.

1 Debates, 164, 258, 259; 2 Debates, 164, 318, 568, 633, 664, 808, 833, 858, 870.

ARTICLE III.

EXECUTIVE.

SEC. 1. The executive department shall consist of a governor, lieutenant governor, secretary of state, auditor, treasurer, and an attorney general, who shall be chosen by the electors of the state, on the second Tuesday of October, and at the places of voting for members of the general assembly. (*See Const. 1802, Art. II, §§ 2, 16; Art. VI, § 2.*)

Executive
department.

1 Debates, 299–302, 313, 323–327; 2 Debates, 287, 289, 293, 294, 331–333, 349, 808, 834, 859, 870.

SEC. 2. The governor, lieutenant governor, secretary of state, treasurer and attorney general shall hold their offices for two years; and the auditor for four years. Their terms of office shall commence on the second Monday of January next after their election, and continue until their successors are elected and qualified. (*See Const. 1802, Art. II, §§ 3, 16.*)

Term of
office.

1 Debates, 300, 306, 323–326, 335, 336; 2 Debates, 287, 289, 293, 349, 808, 834, 835, 859, 870.

SEC. 3. The returns of every election for the officers named in the foregoing section shall be sealed up and transmitted to the seat of government, by the returning officers, directed to the president of the senate, who, during the first week of the session, shall open and publish them, and declare the result, in the presence of a majority of the members of each house of the general assembly. The person having the highest number of votes shall be declared duly elected; but if any two or more shall be highest, and equal in votes, for the same office, one of them shall be chosen by the joint vote of both houses. (*See Const. 1802, Art. II, § 2.*)

Election
returns.

1 Debates, 300, 306, 324; 2 Debates, 287, 808, 835, 859, 870.)

SEC. 4. Should there be no session of the general assembly in January next after an election for any of the officers aforesaid, the returns of such election shall be made to the secretary of state, and opened, and the result declared by the governor, in such manner as may be provided by law.

Same
subject.

2 Debates, 349, 808, 835, 859, 870.

Executive
power
vested in
governor.

SEC. 5. The supreme executive power of this state shall be vested in the governor. (*See Const. 1802, Art. II, § 1.*)

Although the Governor, in the exercise of the supreme executive power of the state, may, from the nature of his authority, have a discretion which cannot be controlled by judicial power, yet in regard to a ministerial act, which might have been devolved on any other officer of the state, and affecting any specific private right, he may be made amenable to the compulsory power of the courts. *State v. Chase*, 5 Ohio St., 528. "Under our system of government, no officer is placed above the restraining authority of the law, which is truly said to be universal in its behests—'all paying it homage, the least as feeling its care, and the greatest as not exempt from its power.' The judicial power cannot interpose and direct in regard to the performance of an official act which rests in the discretion of any officer, whether executive, legislative or judicial. The constitutional provision declaring that 'the supreme executive power of this state shall be vested in the Governor,' clothes the Governor with important political powers, in the exercise of which he uses his own judgment or discretion, and in regard to which his determinations are conclusive. But there is nothing in the nature of the chief executive office of this state which prevents the performance of some duties merely ministerial being enjoined on the Governor. While the authority of the Governor is supreme in the exercise of his political and executive functions, which depend on the exercise of his own judgment or discretion, the authority of the judiciary of the state is supreme in the determination of all legal questions involved in any matter judicially brought before it. Although the state cannot be sued, there is nothing in the nature of the office of Governor which prevents the prosecution of a suit against the person engaged in discharging its duties." *Ib.*, 534, 535—Bartley, C. J.

1 Debates, 299, 302; 2 Debates, 808, 835, 859, 870.

He may re-
quire writ-
ten informa-
tion, etc.

SEC. 6. He may require information, in writing, from the officers in the executive department, upon any subject relating to the duties of their respective offices; and shall see that the laws are faithfully executed. (*See Const. 1802, Art. II, § 7.*)

1 Debates, 300, 306; 2 Debates, 808, 835, 859, 870.

He shall
recommend
measures,
etc.

SEC. 7. He shall communicate at every session, by message, to the general assembly, the condition of the state, and recommend such measures as he shall deem expedient. (*See Const. 1802, Art. II, § 4.*)

1 Debates, 300, 306, 324; 2 Debates, 287, 808, 835, 859, 870.

When and
how he may
convene the
general
assembly.

SEC. 8. He may, on extraordinary occasions, convene the general assembly by proclamation, and shall state to both houses, when assembled, the purpose for which they have been convened. (*See Const. 1802, Art. II, § 9.*)

1 Debates, 300, 306, 324, 336; 2 Debates, 287, 288, 808, 835, 859, 870.

When he
may adjourn
the general
assembly.

SEC. 9. In case of disagreement between the two houses, in respect to the time of adjournment, he shall have power to adjourn the general assembly to such time as he may

think proper, but not beyond the regular meetings thereof. (*See Const. 1802, Art. II, § 11.*)

1 Debates, 300, 306, 324; 2 Debates, 288, 808, 835, 859, 870.

SEC. 10. He shall be commander-in-chief of the military and naval forces of the state, except when they shall be called into the service of the United States. (*See Const. 1802, Art. II, § 10.*)

Command-
er-in-chief
of militia.

1 Debates, 300, 306; 2 Debates, 808, 835, 859, 870.

SEC. 11. He shall have power, after conviction, to grant reprieves, commutations, and pardons, for all crimes and offenses, except treason and cases of impeachment, upon such conditions as he may think proper; subject, however, to such regulations, as to the manner of applying for pardons, as may be prescribed by law. Upon conviction for treason, he may suspend the execution of the sentence, and report the case to the general assembly, at its next meeting, when the general assembly shall either pardon, commute the sentence, direct its execution, or grant a further reprieve. He shall communicate to the general assembly, at every regular session, each case of reprieve, commutation or pardon granted, stating the name and crime of the convict, the sentence, its date, and the date of the commutation, pardon, or reprieve, with his reasons therefor. (*See Const. 1802, Art. II, § 5.*)

May grant
reprieves,
commuta-
tions and
pardons.

“The government is represented by the executive, to whom is solely confided the discretion when the prerogative is to be exercised. It is his function to grant or withhold the act of clemency, whether it be the remission of a pecuniary penalty, the commutation of a sentence, or the liberation of the prisoner. It is conceded that the power of absolute pardon is given to the executive, and this admission, as a general rule, would include the power to remit a portion of the punishment, or to modify it, as the circumstances of the particular case may properly suggest. Such, we might readily suppose, would be the result, whenever the general authority is granted; nor can we find any difficulty in arriving at the conclusion, that if the right to restrict or modify, or release the punishment, in whole or in part, exists, the power to annex a condition to the favor conferred is not a necessary sequence.” *Ex parte Lockhart*, 1 Disney’s Rep., 105-108—Storer, J. (*See Art. I, § 12, Note 1.*)

The act of February 1, 1853 (S. & C., 708), giving to parties imprisoned for non-payment of fines the benefit of the laws for the relief of insolvent debtors, and authorizing their discharge as such, is not an attempt to place the pardoning power in hands other than those of the Governor of the State. It is merely a modification of penalties prescribed for certain offenses, and is not in conflict with the Constitution. *Ex parte Scott*, 19 Ohio St., 581.

1 Debates, 300, 306, 307, 324; 2 Debates, 288, 293, 808, 835, 859, 870.

SEC. 12. There shall be a seal of the state, which shall be kept by the governor, and used by him officially; and shall be called “The Great Seal of the State of Ohio.” (*See Const. 1802, Art. II, § 14.*)

Seal of state,
and by
whom kept.

1 Debates, 300, 307; 2 Debates, 808, 835, 859, 870.

How grants
and commis-
sions issued.

SEC. 13. All grants and commissions shall be issued in the name, and by the authority, of the state of Ohio; sealed with the great seal; signed by the governor, and countersigned by the secretary of state. (*See Const. 1802, Art. II, § 15.*)

1 Debates, 300, 307; 2 Debates, 808, 835, 859, 870.

Who ineligi-
ble for gov-
ernor.

SEC. 14. No member of congress, or other person holding office under the authority of this state, or of the United States, shall execute the office of governor, except as herein provided. (*See Const. 1802, Art. II, § 13.*)

1 Debates, 300, 307; 2 Debates, 288, 808, 835, 859, 870.

Who shall
fill his place
when vacan-
cy occurs.

SEC. 15. In case of the death, impeachment, resignation, removal, or other disability of the governor, the powers and duties of the office, for the residue of the term, or until he shall be acquitted, or the disability removed, shall devolve upon the lieutenant governor. (*See Const. 1802, Art. II, § 12.*)

1 Debates, 300, 307; 2 Debates, 331-333, 808, 835, 859, 870.

Lieutenant
governor.

SEC. 16. The lieutenant governor shall be president of the senate, but shall vote only when the senate is equally divided; and in case of his absence, or impeachment, or when he shall exercise the office of governor, the senate shall choose a president *pro tempore*.

1 Debates, 300; 2 Debates, 293, 808, 835, 859, 870.

If vacancy
shall occur
while exe-
cuting the
office of gov-
ernor who
shall act.

SEC. 17. If the lieutenant governor, while executing the office of governor, shall be impeached, displaced, resign or die, or otherwise become incapable of performing the duties of the office, the president of the senate shall act as governor, until the vacancy is filled, or the disability removed; and if the president of the senate, for any of the above causes, shall be rendered incapable of performing the duties pertaining to the office of governor, the same shall devolve upon the speaker of the house of representatives. (*See Const. 1802, Art. II, § 12.*)

1 Debates, 300; 2 Debates, 293, 331-333, 808, 809, 835, 859, 870.

What vacan-
cies gover-
nor to fill.

SEC. 18. Should the office of auditor, treasurer, secretary or attorney general, become vacant, for any of the causes specified in the fifteenth section of this article, the governor shall fill the vacancy until the disability is removed, or a successor elected and qualified. Every such vacancy shall be filled by election, at the first general election that occurs more than thirty days after it shall have happened; and the person chosen shall hold the office for the full term fixed in the second section of this article.

1 Debates, 300, 323-336; 2 Debates, 289, 290, 349, 809, 835, 859, 870.

Compensa-
tion.

SEC. 19. The officers mentioned in this article shall, at stated times, receive for their services, a compensation to be established by law, which shall neither be increased nor diminished during the period for which they shall have been elected. (*See Const. 1802, Art. I, § 19.*)

1 Debates, 300, 313-324; 2 Debates, 288, 289, 291, 293, 349, 809, 835, 859, 870.

SEC. 20. The officers of the executive department, and of the public state institutions shall, at least five days preceding each regular session of the general assembly, severally report to the governor, who shall transmit such reports, with his message, to the general assembly.

Officers to report to governor, and when.

2 Debates, 293, 809, 835, 859, 870.

ARTICLE IV.

JUDICIAL.

SEC. 1. The judicial power (1) of the state shall be vested in a supreme court, (2) in district courts, courts of common pleas, courts of probate, justices of the peace, and such other courts, inferior to the supreme court, in one or more counties, as the general assembly may, from time to time, establish. (3) (*See Const. 1802, Art. III, § 1.*)

In whom judicial power vested.

(1) It is the right and duty of the judicial tribunals to determine whether a legislative act drawn in question in a suit pending before them, is opposed to the Constitution of the United States, or of this state, and if so found, to treat it as a nullity. *C. W. & Z. R. R. Co. v. Com. of Clinton Co.*, 1 Ohio St., 77.

In such case the presumption is always in favor of the validity of the law; and it is only when manifest assumption of authority and a clear incompatibility between the Constitution and the law appear, that the judicial power will refuse to execute it. *Ib.*; *State v. Dudley*, *Ib.*, 437; *Cass v. Dillon*, 2 Ohio St., 608; *Hill v. Higdon*, 5 Ohio St., 243; *Goshorn v. Purcell*, 11 Ohio St., 641; *Armstrong v. Treas. of Athens Co.*, 10 Ohio, 235.

While we should be careful not to extend the powers of government, by far-fetched implication, we should be equally careful not to defeat the purpose of the Constitution, by a narrow and unreasonable construction. *Cass v. Dillon*, 2 Ohio St., 608.

Courts cannot nullify an act of legislation on the vague ground that they think it opposed to a general latent spirit, supposed to pervade or underlie the Constitution, but which neither its terms nor its implications clearly disclose. *Walker v. Cincinnati*, 21 Ohio St., 14.

“The general and abstract question, whether an act of the Legislature be unconstitutional, cannot with propriety be presented to a court; the question must be, whether the act furnishes the rule to govern the particular case.” *Foster v. Com. of Wood Co.*, 9 Ohio St., 540-543—Gholson, J.

As a general rule, one part of an act will not be held unconstitutional, and another part constitutional, unless the respective parts are independent of each other. They must stand or fall together. *State v. Com. of Perry Co.*, 5 Ohio St., 497.

But parts of an enactment, when capable of separation, may be valid and effectual, when other parts may be void, by reason of repugnancy to a constitutional provision. *Stevens v. State*, 3 Ohio St., 453.

The rejection of some of the provisions of a statute, for unconstitutionality, will not vary the sense or meaning of its remaining provisions, which are to be construed as well in the light of those rejected as of those which remain. *State v. Dombaugh*, 20 Ohio St., 167.

(2) The Supreme Court of the United States has appellate jurisdiction, in certain cases, over the courts of last resort in the several states. *Piqua Bank v. Knoup*, 6 Ohio St., 342; *Skelly v. Jefferson Bank*, 9 Ohio St., 606.

(3) See Art. IV., § 15, Note 1.

1 Debates, 430, 551, 584, 585, 606; 2 Debates, 369-371, 384, 385, 389, 391, 392, 396, 401, 402, 483, 484, 668-674, 678-681, 685, 686, 687, 695-698, 809, 835, 859, 870.

The supreme court.

SEC. 2. The supreme court shall consist of five judges, a majority of whom shall be necessary to form a quorum, or to pronounce a decision. It shall have original jurisdiction in quo warranto, mandamus, habeas corpus, and procedendo,⁽¹⁾ and such appellate jurisdiction as may be provided by law.⁽²⁾ It shall hold at least one term in each year, at the seat of government, and such other terms, at the seat of government, or elsewhere, as may be provided by law. The judges of the supreme court shall be elected by the electors of the state at large. (*See Const. 1802, Art. III, § 2.*)

(1) The original jurisdiction of the Supreme Court is limited by the Constitution to quo warranto, mandamus, habeas corpus, and procedendo. *Logan Branch Bank, ex parte*, 1 Ohio St., 432; *Kent v. Mahaffy*, 2 Ohio St., 498.

"This is the only original jurisdiction granted by this instrument, and it would be wholly inconsistent with, and in a great measure destructive of, the judicial system it ordains, to suppose that this original jurisdiction can be enlarged by law. It is true there is no express prohibition against it, but none was necessary. The court can exercise only such powers as the Constitution itself confers, or authorizes the Legislature to grant. It can derive no power elsewhere. The only jurisdiction that the Legislature is authorized to confer upon the Supreme Court, is appellate jurisdiction. For it cannot be supposed that, by the general grant of legislative power, in the second article of the Constitution, the legislative authority to confer powers upon courts is extended beyond the authority vested in the Assembly by the fourth, or judicial, article." *Kent v. Mahaffy*, 2 Ohio St., 498-499—Thurman, J.

The power to grant an injunction in a case pending in the Court of Common Pleas cannot constitutionally be conferred on the Supreme Court. *Ib.*, 498. And see *Griffith v. Com. of Crawford Co.*, 20 Ohio, 609.

Nor can such power be conferred on a single judge of that court, sitting at chambers. *P. Ft. W. & C. R. R. Co. v. Hurd*, 17 Ohio St., 144.

Nor has that court original jurisdiction, under the Constitution, to hear and determine an action purporting to be brought therein to enjoin illegal taxes. *Wheeler v. Lynn*, 8 Ohio St., 393.

(2) The appellate jurisdiction of the Supreme Court extends only to the judgments and decrees of courts created and organized in pur-

suance of the provisions of the Constitution. Therefore the appeal from the decision of the Auditor of State, provided in the seventy-fourth section of the act of April 13, 1852 (50 O. L., 166), "for the assessment and taxation of all property in this state," etc., is in conflict with the provisions of the Constitution, from which the jurisdiction of the court is derived, and hence cannot be had. *Logan Branch Bank, ex parte*, 1 Ohio St., 432.

The statute authorizing the reservation of a cause by a District Court, or the supreme judge sitting therein, for decision by the Supreme Court, is constitutional. *Chase v. Washburne*, 2 Ohio St., 98.

The District and Supreme Courts are capable of receiving jurisdiction to review cases decided by themselves. *Longworth v. Sturges*, 4 Ohio St., 690.

By the Constitution, and the act of February 19, 1852 (50 O. L., 67), for the organization of the courts, ample power was given to the Supreme Court to review a judgment of the late Supreme Court on the circuit. *Groves v. Stone*, 3 Ohio St., 576.

1 Debates, 430, 431, 551, 585-592, 606-608, 611, 616, 622-624, 627, 628, 642, 651-655; 2 Debates, 353-357; 364-368, 384-391, 396, 400-402, 483, 484, 668, 681, 685, 686, 694-698, 809, 835, 859, 860, 870.

SEC. 3. The state shall be divided into nine common pleas districts, of which the county of Hamilton shall constitute one, of compact territory, and bounded by county lines; (1) and each of said districts, consisting of three or more counties, shall be subdivided into three parts, of compact territory, bounded by county lines, and as nearly equal in population as practicable; in each of which, one judge of the court of common pleas for said district, (2) and residing therein, shall be elected by the electors of said subdivision. Courts of common pleas shall be held, by one or more of these judges, in every county in the district, as often as may be provided by law; and more than one court, or sitting thereof, may be held at the same time in each district. (3) (*See Const. 1802, Art. III, § 3.*)

The common pleas.

(1) "To construe properly this provision, reference must be had to other parts of the Constitution. It certainly cannot mean that the number of the districts shall always continue to be nine, since power is given to the General Assembly to increase or diminish them (§ 15). It is equally clear that it cannot mean that the county limits shall always remain the same, as full power is given to change them and to make new counties (Art. II, § 30). To hold, on the other hand, that the limits of the districts must of necessity enlarge or diminish with the counties named as embraced in them, would be to say that Hamilton county, so reduced by division as to contain but twenty thousand inhabitants, would still constitute a district and be entitled to elect three judges. When taken in connection with the fact that the convention itself proceeded to make the division referred to in this section (see Art. XI, § 12), it is very clear to us that it must be regarded mainly as prescribing a rule for the government of their own action; and when they did act in accordance with it, and fixed the districts by definite

boundaries, they must so remain, securing to all the citizens included within them their right of suffrage in such districts, until changed by legislative enactment." *State v. Dudley*, 1 Ohio St., 437-449—Ranney, J.

(2) The judges of the courts of common pleas are judges of their respective districts, and not of the mere subdivision thereof. The subdivision of the districts is for election purposes merely. *Harris v. Gest*, 4 Ohio St., 472.

(3) There is nothing in the Constitution that forbids the holding of common pleas courts in different counties of a subdivision at the same time. *Ib.*

1 Debates, 431, 590-655; 2 Debates, 357, 370, 379-381, 384, 387, 389, 390, 396, 401, 402, 483-485, 681, 686, 695-698, 809, 835, 836, 860, 870.

Their jurisdiction.

SEC. 4. The jurisdiction of the courts of common pleas, and of the judges thereof, shall be fixed by law. (*See Const.* 1802, *Art. III*, §§ 3, 4, 5, 6.)

The Constitution confers no jurisdiction whatever upon the court of common pleas, in either civil or criminal cases. It is made capable of receiving jurisdiction in all such cases, but can exercise none until conferred by law. *Stevens v. State*, 3 Ohio St., 453.

See Art. II, § 26, Note 1; Art. IV, § 8, Note 3.

1 Debates, 431, 590; 2 Debates, 357, 370, 396, 401, 402, 483, 485, 685, 686, 695-698, 809, 836, 860, 870.

District courts.

SEC. 5. District courts shall be composed of the judges of the court of common pleas (1) of the respective districts, and one of the judges of the supreme court, (2) any three of whom shall be a quorum, and shall be held in each county therein, at least once in each year; but if it shall be found inexpedient to hold such court annually, in each county of any district, the general assembly may, for such district, provide that said court shall hold at least three annual sessions therein, in not less than three places: Provided, that the general assembly may, by law, authorize the judges of each district to fix the times of holding the courts therein. (3)

(1) The judges of the Court of Common Pleas are, by the Constitution and laws of this state, judges of the District Court, and, as such, empowered to exercise its authority. *Hollister v. Judges*, 8 Ohio St., 201.

(2) A District Court held by three or more Common Pleas judges, without the presence of a judge of the Supreme Court, is a lawful and constitutional District Court. *King v. Safford*, 19 Ohio St., 587.

(3) Section seven of the act of March 29, 1856 (53 O. L., 44), in relation to the time of holding courts, authorizing the judges of a district to appoint special terms for good cause, is authorized by this section. *Merchant v. North*, 10 Ohio St., 251.

1 Debates, 431, 590-626, 630, 645, 647-651, 655-669; 2 Debates, 357, 368-391, 396, 402, 483-485, 668, 669, 685, 686, 695-698, 809, 836, 860, 870.

SEC. 6. The district court shall have like original jurisdiction with the supreme court, and such appellate jurisdiction as may be provided by law.

Their jurisdiction.

Under the new judicial system established by this Constitution and the enactments under it, the District Court has no jurisdiction, on the election of the defendant or otherwise, to try cases of murder, unless they were pending in the old Supreme Court, and went to the District Court by the transfer provided in the Constitution, as pending business. (*Schedule, § 12.*) *Parks v. State*, 3 Ohio St., 101; *Cass v. Dillon*, 2 Ohio St., 607-640; *Robbins v. State*, 8 Ohio St., 131-161.

"This unfortunate operation of the present Constitution, doubtless the result of oversight, is much to be regretted. While the new Constitution enlarged the means of obtaining justice in civil cases—providing two courts, and allowing a trial in each, as a matter of right, in contests for property it narrowed the chance for impartial justice, in causes in which life is at stake, by allowing a trial in such cases only in the Common Pleas, and taking away the right of the accused, which had existed, to elect to be tried in the higher tribunal, held by several judges removed from the local excitement and prejudice which too often surround the single judge in the trial of capital cases, in the Common Pleas." *Robbins v. State*, 8 Ohio St., 131-161—Bartley, C. J.

A statute authorizing the reservation of a cause by a District Court, or the Supreme Judge sitting therein, for decision by the Supreme Court, is constitutional. *Chase v. Washburne*, 2 Ohio St., 98.

1 Debates, 431, 590, 594, 595, 618, 619; 2 Debates, 396, 402, 483-485, 668, 685, 686, 695-698, 809, 836, 860, 870.

SEC. 7. There shall be established in each county, a probate court, which shall be a court of record, (1) open at all times, and holden by one judge, elected by the voters of the county, who shall hold his office for the term of three years, (2) and shall receive such compensation, payable out of the county treasury, or by fees, or both, as shall be provided by law.

Probate courts.

(1) The Probate Courts of this state are, in the fullest sense, courts of record; they belong to the class whose records import absolute verity, that are competent to decide on their own jurisdiction, and to exercise it to final judgment, without setting forth the facts and evidence on which it is rendered. *Shroyer v. Richmond*, 16 Ohio St., 455.

(2) The county of Wyandot, on account of a tie vote, failed to elect a probate judge on the second Tuesday of October, 1851, as prescribed by the fourth section of the schedule to this Constitution. At the fall election of 1852, K. was elected to that office, and was commissioned for the term of three years. At the fall election of 1855, he was re-elected and commissioned for a like term. On the second Tuesday of October, 1857, and while K. still remained judge *de facto*, another election was held for the office, and M. received the highest number of votes. Held—That K. was, on each of his said elections, legally commissioned for the term of three years, and that M. was not therefore entitled to a commission to take effect from the 9th day of February,

1858. (*Schedule, § 4.*) *State v. Chase*, 7 Ohio St., 372. (*See Art. IV, § 13, note.*)

1 Debates, 431, 551, 591, 593, 602, 623, 669, 673, 675, 676; 2 Debates, 379, 390, 396-402, 483-485, 681, 682, 685, 686, 695-698, 809, 836, 860, 870.

Their jurisdiction.

SEC. 8. The probate court shall have jurisdiction in probate and testamentary matters, the appointment of administrators and guardians, the settlement of the accounts of executors, administrators (1) and guardians, and such jurisdiction in habeas corpus, the issuing of marriage licenses, and for the sale of land by executors, administrators and guardians, and such other jurisdiction, in any county or counties, (2) as may be provided by law.

(1) There exists no constitutional impediment to investing the Probate Court with power, upon final settlement with the administrator of an intestate estate, to order distribution of the money remaining in his hands to the persons entitled thereto. *McLaughlin v. McLaughlin*, 4 Ohio St., 508.

(2) This jurisdiction may be extended to all the counties in the state by a general enactment. "The words, 'in any county or counties,' were probably used rather as enabling than restrictive language, and were designed to permit the General Assembly—notwithstanding the provisions of the twenty-sixth section of the second article, requiring all laws of a general nature to have a uniform operation throughout the state—in its discretion, to confer upon the Probate Court more extended powers in some counties than in others. Upon the opposite construction, a power to confer the jurisdiction in one county by a local enactment, is a power to confer it in all the counties in the same manner; which brings us to the absurd conclusion that the Legislature is competent to do by ninety laws what it is incompetent to do by one." *Giesy v. C. W. & Z. R. R. Co.*, 4 Ohio St., 308-320—Ranney, J.

"A jurisdiction may be given to the Probate Court in one county which is not conferred in another; but this express exception relates only to the extent of the jurisdiction of the Probate Court. The whole object of the section is to define the limits of its jurisdiction; it treats of nothing else, and does not once name the Courts of Common Pleas. Nor does it follow as a necessary conclusion that because the jurisdiction of the Probate Court may be more extensive in one county than in another, the jurisdiction of the Courts of Common Pleas must also differ in extent. The latter may be uniform and the former not. The Probate Court may, in some counties, possess a jurisdiction concurrent with the Common Pleas, which is denied to it in others." *Kelley v. State*, 6 Ohio St., 269-273—Scott, J.; and see *Art. II, § 26, note 1*.

1 Debates, 431, 551, 591, 593, 602, 609-612, 616, 622, 623, 625, 654, 669-695; 2 Debates, 357-371, 379, 384, 390, 396, 398-402, 483-485, 681-686, 695-698, 809, 836, 860, 870.

Justices of the peace.

SEC. 9. A competent number of justices of the peace shall be elected, by the electors, in each township of the several counties. Their term of office shall be three years, and their powers and duties shall be regulated by law. (*See Const. 1802, Art. III, § 11.*)

1 Debates, 431, 551, 593, 654; 2 Debates, 370, 384, 396, 401, 402, 483-485, 685, 686, 695-698, 809, 836, 860, 870.

SEC. 10. All judges, other than those provided for in this constitution, shall be elected by the electors of the judicial district for which they may be created, but not for a longer term of office than five years.

Other judges.

1 Debates. 431, 551, 676-707, 710-719; 2 Debates, 359, 360, 396, 402, 484, 685, 686, 695-698, 809, 836, 860, 870.

SEC. 11. The judges of the supreme court shall, immediately after the first election under this constitution, be classified by lot, so that one shall hold for the term of one year, one for two years, one for three years, one for four years, and one for five years; and, at all subsequent elections, the term of each of said judges shall be for five years.

Classification of supreme judges.

1 Debates, 431, 551, 719, 720; 2 Debates, 131-133, 360, 396, 400, 402, 483-485, 684-686, 695-698, 809, 836, 860, 870.

SEC. 12. The judges of the courts of common pleas shall, while in office, reside in the district for which they are elected, and their term of office shall be for five years. (*See Const. 1802, Art. III, §§ 3, 8.*)

Common pleas judges, their term of office and residence.

1 Debates, 431; 2 Debates, 133, 360, 396, 402, 483-485, 685, 686, 695-698, 809, 836, 860, 870.

SEC. 13. In case the office of any judge shall become vacant, before the expiration of the regular term for which he was elected, the vacancy shall be filled by appointment by the governor, until a successor is elected and qualified; and such successor shall be elected for the unexpired term, at the first annual election that occurs more than thirty days after the vacancy shall have happened.

Vacancies, how filled.

Where a vacancy occurred in the office of Probate Judge of Pickaway county more than thirty days before the next annual election, at which a probate judge for the constitutional term was also to be chosen, and the sheriff, in his proclamation giving notice of said election, failed to give notice that a probate judge would be chosen to fill the unexpired term, but merely gave notice that one probate judge for said county would be chosen, without more, and the voters cast their ballots for probate judge without indicating whether for the unexpired term or for the constitutional term—held: 1. That under the Constitution and laws of this state, such election of probate judge was not void for uncertainty. 2. That such election did not embrace both the offices which should have been voted for at that time. 3. That the judge thus elected must, by reasonable intendment, be held to have been elected for the full, and not for the unexpired term. *State v. Cogswell*, 8 Ohio St., 620.

The term of office of a judge elected to fill a vacancy is limited to the unexpired portion of the regular term in which such vacancy occurs; and a commission assuming to confer official authority for a longer term is, as to the excess, inoperative. *Scarff v. Foster*, 15 Ohio St., 137.

Where a vacancy is about to occur in the office of probate judge, by reason of the expiration of the term of an incumbent of that office, and the sheriff, in pursuance of the statute, in due time prior to the day for the regular election, publishes his proclamation, giving notice of such election, and enumerating therein all the state and county

offices to be filled at such election, except the office of probate judge, in respect to which the proclamation is silent; and, by reason of such misfeasance of the sheriff, the great body of the electors of such county are misled, and have no notice, either official or in fact, of an election to fill the office of probate judge; but, nevertheless, a small number of the electors of the county, less than one-fourth of the whole number of voters at that election, cast their votes for a single candidate, and no votes are cast for any other, such attempted election is irregular and invalid. *Foster v. Scarff*, 15 Ohio St., 532.

“From this section the implication is manifest, that the Constitution intends that in respect to elections to fill vacancies in the office of judge, at least thirty days’ time for notice of the election shall be afforded. . . . We do not intend to hold, nor are we of opinion, that the notice by proclamation, as prescribed by law, is *per se*, and in all supposable cases, necessary to the validity of an election. If such were the law, it would be in the power of a ministerial officer, by his misfeasance, always to prevent a legal election. We have no doubt that where an election is held in other respects as prescribed by law, and notice in fact of the election is brought home to the great body of the electors, though derived through means other than the proclamation which the law prescribes, such election would be valid. But where, as in this case, there was no notice, either by official proclamation or in fact, and it is obvious that the great body of the electors were misled, for want of the official proclamation, its absence becomes such an irregularity as to prevent an actual choice by the electors, prevents an actual election, in the primary sense of that word, and renders invalid any semblance of an election, which may have been attempted by a few, and which must operate, if it be allowed to operate at all, as a surprise and fraud upon the rights of the many.” *Ib.*, 535, 537—Brinkerhoff, C. J.

1 Debates, 431, 551; 2 Debates, 333, 360, 396, 400, 402, 483–485, 685, 686, 695–698, 809, 836, 860, 870.

Compensation of judges.

Ineligible to other offices.

SEC. 14. The judges of the supreme court, and of the court of common pleas, shall, at stated times, receive, for their services, such compensation as may be provided by law, which shall not be diminished, or increased during their term of office; but they shall receive no fees or perquisites, nor hold any other office of profit or trust, under the authority of this state, or the United States. (1) All votes for either of them, for any elective office, except a judicial office, under the authority of this state, given by the general assembly, or the people, shall be void. (*See Const. 1802, Art. III, § 8.*)

(1) The act of May 4, 1869 (66 O. L., 80), “relating to cities of the first class having a population exceeding one hundred and fifty thousand inhabitants,” is not opposed to this section. The duty it imposes upon the court—the appointment of trustees of a railroad to be constructed by a municipal corporation—is of a judicial character. Neither does it create a new office, in imposing this duty on the judges of the

court, but simply annexes a new duty to an existing office. *Walker v. Cincinnati*, 21 Ohio St., 14.

So also the authority of determining the number and compensation of assistants to various county officers, conferred by the act of April 6, 1870 (67 O. L., 36), and the supplemental act of April 12, 1871 (68 O. L., 58), on the judges of the Court of Common Pleas, does not invest them with a new office, but merely authorizes them to perform additional duties as judges. *State v. Judges*, Ib. 1.

1 Debates, 431, 551; 2 Debates, 133, 134, 360-364, 396, 397, 400, 402, 483-485, 685, 686, 695-698, 809, 836, 837, 860, 870.

SEC. 15. The general assembly may increase, or diminish, the number of the judges of the supreme court, the number of the districts of the court of common pleas, the number of judges in any district, change the districts, or the subdivisions thereof, or establish other courts, (1) whenever two-thirds of the members elected to each house shall concur therein; but no such change, addition, or diminution, shall vacate the office of any judge. (2.)

Number of judges may be increased or diminished, districts altered, and other courts established.

(1) "It is perfectly clear that, upon the creation of any additional court by the Legislature, the judicial officer must be elected, as such, by the electors of the district for which such court is created (Art. IV, § 10); and it is not within the competency of the Legislature to clothe with judicial power any officer or person not elected as a judge." *Logan Branch Bank, ex parte*, 1 Ohio St., 432-434—Corwin, J.

The act of May 3, 1852, "to provide for the organization of cities and incorporated villages" (S. & C., 1493), conferring on mayors of cities of the second class "all the jurisdiction and powers of a justice of the peace in all matters civil or criminal," provided the same was passed by a vote of two-thirds of all the members elected to each House of the General Assembly, is not in contravention of this Constitution. *Steamboat Northern Indiana v. Milliken*, 7 Ohio St., 383.

Such concurrence will, in absence of all showing to the contrary, be presumed. *Ib.*; *Miller v. State*, 3 Ohio St., 475.

(2) That is, the office of any judge of a court established by this Constitution. But the Constitution has not limited the power of the General Assembly to abolish courts created by the Legislature, nor its power to vacate the office of judges of such courts. *State v. Wright*, 7 Ohio State, 333.

1 Debates, 431; 2 Debates, 396, 400, 402, 484, 485, 684-686, 695 698, 809, 837, 860, 870.

SEC. 16. There shall be elected in each county, by the electors thereof, one clerk of the court of common pleas, who shall hold his office for the term of three years, and until his successor shall be elected and qualified. He shall, by virtue of his office, be clerk of all other courts of record held therein; but, the general assembly may provide, by law, for the election of a clerk, with a like term of office, for each or any other of the courts of record, and may authorize the judge of the probate court to perform the duties

Clerks of courts.

of clerk for his court, under such regulations as may be directed by law. Clerks of courts shall be removable for such cause and in such manner as shall be prescribed by law. (*Sec. Const.* 1802, *Art. III*, § 9.)

The period for the termination of the office of Clerk of the Court of Common Pleas, held by simple appointment to fill a vacancy, is not fixed by the Constitution, but subject to legislative enactment. (*Art. II*, § 20.) *State v. Neibling*, 6 Ohio St., 40.

In case of a vacancy in the office of Clerk of the Court of Common Pleas, the successor, elected by the electors of the county, is elected for the full term of three years, which will commence from and after the day of his election. *Ib.*

1 Debates, 431, 551; 2 Debates, 134-139, 364, 396, 397, 400, 402, 483-485, 685, 686, 695-698, 809, 810, 837, 860, 870.

Judges
removable.

SEC. 17. Judges may be removed from office, by concurrent resolution of both houses of the general assembly, if two-thirds of the members, elected to each house, concur therein; but, no such removal shall be made, except upon complaint, the substance of which shall be entered on the journal, nor, until the party charged shall have had notice thereof, and an opportunity to be heard.

1 Debates, 431; 2 Debates, 397, 398, 400, 402, 483-485, 685, 686, 695-698, 810, 837, 860, 870.

Powers and
jurisdiction.

SEC. 18. The several judges of the supreme court, of the common pleas, and of such other courts as may be created, shall, respectively, have and exercise such power and jurisdiction, at chambers, or otherwise, as may be directed by law.

"Jurisdiction at chambers is incidental to, and grows out of, the jurisdiction of the court itself. It is the power to hear and determine, out of court, such questions arising between the parties to a controversy, as might well be determined by the court itself, but which the Legislature has seen fit to intrust to the judgment of a single judge, out of court, without requiring them to be brought before the court in actual session. It follows, that the jurisdiction of a judge at chambers cannot go beyond the jurisdiction of the court to which he belongs, or extend to matters with which his court has nothing to do; and the Constitution, in granting such jurisdiction at chambers to the judges of the several courts of the state, as may be directed by law, is to be understood as limiting the jurisdiction of each to such subject matters as are within the jurisdiction of his proper court, and to which it is, *ex vi termini*, limited." *P. Ft. W. & C. Ry. Co. v. Hurd*, 17 Ohio St., 144-146, 147—Scott, J.

1 Debates, 431; 2 Debates, 402, 484, 685, 686, 695-698, 810, 837, 860, 870.

Courts of
conciliation.

SEC. 19. The general assembly may establish courts of conciliation, and prescribe their powers and duties; but such courts shall not render final judgment in any case, ex-

cept upon submission, by the parties, of the matter in dispute, and their agreement to abide such judgment.

2 Debates, 390, 391, 402, 483-485, 685, 686, 695-698, 794, 805, 833, 837, 860, 870.

SEC. 20. The style of all process shall be, "The State of Ohio"; all prosecutions shall be carried on in the name, and by the authority, of the state of Ohio; and all indictments shall conclude, "against the peace and dignity of the state of Ohio." (*See Const. 1802, Art. III, § 12.*)

Style of process, prosecution and indictment.

Where it appears from the caption of an indictment that the prosecution is carried on "in the name and by the authority of the state of Ohio," it need not be again averred in the successive counts of the indictment; and if the indictment contains more than one count, and a *nolle prosequi* is entered as to the first, the remaining counts of the indictment will not thereby be rendered defective for want of that averment, where it is contained in the caption. *Davis v. State*, 19 Ohio St., 270.

2 Debates, 398, 402, 484, 485, 685, 686, 695-698, 810, 837, 860, 870.

ARTICLE V.

ELECTIVE FRANCHISE.

SECTION 1. Every white(1) male citizen of the United States, of the age of twenty-one years, who shall have been a resident of the state one year next preceding the election, and of the county, township, or ward, in which he resides, such time as may be provided by law, shall have the qualifications of an elector,(2) and be entitled to vote at all elections.(3) (*See Const. 1802, Art. IV, §§ 1, 5.*)

Who may vote.

(1) For a discussion and definition of the word "white," as here used, see *Anderson v. Millikin*, 9 Ohio St., 568; *Monroe v. Collins*, 17 Ohio St., 665; *Jeffries v. Ankeny*, 11 Ohio, 372; *Thacker v. Hawk*, *Ib.*, 376; *Gray v. State*, 4 Ohio, 353; *Lane v. Baker*, 12 Ohio, 237; *Williams v. School Directors*, *Wright's Rep.*, 178.

This restriction on the elective franchise is now abrogated by the fourteenth and fifteenth articles of amendments to the Federal Constitution. Article XIV, so far as it relates to this subject, is as follows: "All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside." The fifteenth article provides that, 1. "The right of the citizens of the United States to vote shall not be denied or abridged by the United States or by any state, on account of race, color, or previous condition of servitude. 2. The Congress shall have power to enforce this article by appropriate legislation." Such legislation has been enacted by Congress.

(2) The Legislature has no right, directly or indirectly, to deny or abridge the constitutional right of citizens to vote, or unnecessarily to impede its exercise; and laws passed professedly to regulate its exercise or prevent its abuse, must be reasonable, uniform and impartial. *Monroe v. Collins*, 17 Ohio St., 665.

(3) The act of April 13, 1863 (60 O. L., 80), "to enable qualified voters of this state, in the military service of this state or of the United States, to exercise the right of suffrage," was intended to enable qualified voters of the state, in the military service, to vote, in accordance with its provisions, as well without as within the territorial limits of this state. The act is not clearly in conflict with any constitutional provision, and is, therefore, to be regarded as a constitutional and valid enactment. It does not purport to have such extra territorial operation and effect as would place its enactments beyond the legitimate sphere of the legislative power of the state, and so render them invalid. *Lehman v. McBride*, 15 Ohio St., 573.

"The general principle which pervades the Constitution on the subject of elections, is that no one shall be allowed to participate in the election of officers whose jurisdiction will not extend over him, or territorially include the place of his residence; but that the electors of each district or civil subdivision of the state shall have the right to select their own official representatives or public functionaries. Under a proper construction of the Constitution, persons having the qualifications of electors may justly claim 'a right to vote at all elections' of officers of the state, and of such other civil officers as, by the provisions of the Constitution and laws, are to be chosen by the electors of the county, township, ward or district in which such persons respectively reside. The place of holding an election is not the criterion, and furnishes no essential part of the test, which limits the elector's right to vote 'at all elections.' But a right to vote at all elections does not import a right to vote at more than one of the places prescribed by law for holding an election, any more than it imports a right to vote more than once at the same place." *Ib.*, 598—Scott, J.

"We find nothing in this section which refers, in the slightest degree, even by implication, to the place of holding elections. Had it been the intention of the framers of our present Constitution to fix or limit, by this section, the place at which the elective franchise should be exercised by the voters respectively, it is quite remarkable that no attempt should have been made to do so, in express terms; that such an important limitation of legislative power should have been left to be gathered from what is not said, or to be inferred from a declaration of the elector's 'right to vote at all elections.' And it is the more remarkable because, in the corresponding section of the Constitution of 1802 (Art. IV, § 1), which defines the qualifications of electors, there was a clause of express limitation, in the following terms: 'No person shall be entitled to vote except in the county or district in which he shall actually reside at the time of the election.' Now, the fact that this clause was wholly excluded from the present Constitution, and no express limitation as to the place of voting was inserted in its stead, would seem to be quite significant. It is in this part of the Constitution, which treats solely of the elective franchise, that we would naturally expect to find, if anywhere, a restriction limiting the place of its exercise. Here such restriction was placed, in express terms, by the Constitution of 1802, and from this, its appropriate place, it was stricken out in the Constitution of 1851, and inserted in no other place. We think it may be very fairly inferred, that whilst the Constitution defines the qualifi-

cations of electors, and prescribes by what portion of them all officers shall be chosen, it was intended to leave all further details, whether as to the place of holding elections, or the mode in which they should be conducted, to the wisdom of the Legislature, to be provided for, and modified, from time to time, as the ever-varying circumstances of the unknown future might seem to require." *Ib.*

1 Debates, 693; 2 Debates, 8-10, 352, 550-555, 635-640, 811, 838, 860, 870.

SEC. 2. All elections shall be by ballot. (*See Const. 1802, Art. IV, § 2.*) By ballot.

1 Debates, 693; 2 Debates, 10, 811, 838, 860, 870.

SEC. 3. Electors, during their attendance at elections, and in going to, and returning therefrom, shall be privileged from arrest, in all cases, except treason, felony, and breach of the peace. (*See Const. 1802, Art. IV, § 3.*) Voters, when privileged from arrest.

1 Debates, 693; 2 Debates, 10, 811, 838, 860, 870.

SEC. 4. The general assembly shall have power to exclude from the privilege of voting, or of being eligible to office, any person convicted of bribery, perjury, or other infamous crime. (*See Const. 1802, Art. IV, § 4.*) Forfeiture of elective franchise.

1 Debates, 693; 2 Debates, 10, 352, 811, 838, 861, 870.

SEC. 5. No person in the military, naval, or marine service of the United States, shall, by being stationed in any garrison, or military, or naval station, within the state, be considered a resident of this state. Persons not considered residents of the state.

Inmates of an asylum provided by the United States for disabled volunteer soldiers, resident within the territory so used, being within the exclusive jurisdiction of a government other than that of the state within whose boundaries such asylum or territory may be situate, are not residents of such state within the meaning of this section of the Constitution; and where the Constitution of such state confers the elective franchise upon residents thereof alone, the inmates of such asylum, resident within such territory, are not entitled to vote at any election held within and under the laws of such state. *Sinks v. Reese*, 19 Ohio St., 306.

But persons residing in said asylum at the time of an election, after the jurisdiction thereover had been restored to the state, and for the year next preceding the election, are to be regarded as residents of the state, and for the entire year, notwithstanding the fact that part of the year transpired while the jurisdiction was in the United States. *Renner v. Bennett*, 21 Ohio St., 431.

1 Debates, 693; 2 Debates, 10, 811, 838, 861, 870.

SEC. 6. No idiot, or insane person, shall be entitled to the privilege of an elector. Idiots or insane persons.

The vote of a man otherwise qualified, who is neither a lunatic nor an idiot, but whose faculties are simply greatly enfeebled by age, ought not to be rejected. *Sinks v. Reese*, 19 Ohio St., 307.

1 Debates, 693; 2 Debates, 10, 811, 838, 861, 870.

ARTICLE VI.

EDUCATION.

Funds for
educational
and religious
purposes.

SEC. 1. The principal of all funds, arising from the sale, or other disposition of lands, or other property, granted or entrusted to this state for educational and religious purposes, shall forever be preserved inviolate, and undiminished; and, the income arising therefrom, shall be faithfully applied to the specific objects of the original grants, or appropriations.

1 Debates, 693, 694; 2 Debates, 10, 11, 18, 698, 711, 821, 843, 861, 870.

School
funds.

SEC. 2. The general assembly shall make such provisions, by taxation, or otherwise, as, with the income arising from the school trust fund, will secure a thorough and efficient system of common schools throughout the state; (1) but, no religious or other sect, or sects, shall ever have any exclusive right to, or control of, any part of the school funds of this state.

1 Debates, 693, 694; 2 Debates, 11-20, 698-700, 711, 821, 843, 861, 870.

(1) The statute of March 14, 1853, "to provide for the reorganization, supervision and maintenance of common schools," is a law of classification, and not of exclusion, providing for the education of all youths within the prescribed ages; and the words "white" and "colored," as used in said act, are used in their popular and ordinary signification. Children of three-eighths African blood, generally treated and regarded as colored children by the community where they reside, are not, as of right, entitled to admission into the common schools set apart, under said act, for the instruction of white youths. *Van Camp v. Board of Education of Logan*, 9 Ohio St., 406; *State v. McCann*, 21 Ohio St., 198.

See Art. I, § 7, note 2; Const. 1802, Art. VIII, § 25, note.

ARTICLE VII.

PUBLIC INSTITUTIONS.

Insane,
blind, and
deaf and
dumb.

SEC. 1. Institutions for the benefit of the insane, blind, and deaf and dumb, shall always be fostered and supported by the state; and be subject to such regulations as may be prescribed by the general assembly.

1 Debates, 365, 539, 542, 543; 2 Debates, 340, 349, 700, 821, 843, 861, 870.

Directors
of peniten-
tiary, trus-
tees of be-
nevolent
and other
state institu-
tions, how
appointed.

SEC. 2. The directors of the penitentiary shall be appointed or elected in such manner as the general assembly may direct; and the trustees of the benevolent, and other state institutions, now elected by the general assembly, and of such other state institutions as may be hereafter created, shall be appointed by the governor, by and with the advice and consent of the senate; and upon all nominations made by the governor, the question shall be taken by yeas and nays, and entered upon the journals of the senate.

“The first clause of this section is in no way inconsistent, or in conflict, with the provisions of the twenty-seventh section of the second article, but is in entire harmony with it. It in no way qualifies or enlarges the exceptions to the general prohibition of any appointing power by the General Assembly therein contained, but leaves that prohibition to operate, with full force and effect. . . . The clause of Art. VII, § 2, that ‘the directors of the penitentiary shall be appointed or elected in such manner as the General Assembly may direct,’ and that of Art. II, § 27, that ‘the election and appointment of all officers, and the filling of all vacancies not otherwise provided for by this Constitution, or the Constitution of the United States, shall be made in such manner as may be directed by law,’ are equivalent to each other. When the Legislature ‘directs,’ it directs by law. Its appropriate voice is the voice of law. The prohibition attached, by way of proviso, expressly to the one, applies equally to both, and is no more in conflict with the one than with the other.” *State v. Kennon*, 7 Ohio St., 546-561, 562—Brinkerhoff, J. And see Art. II, § 27, Note 3.

1 Debates, 365, 539-542, 549; 2 Debates, 340-343, 349, 700, 821, 843, 861, 870.

SEC. 3. The governor shall have power to fill all vacancies that may occur in the offices aforesaid, until the next session of the general assembly, and, until a successor to his appointee shall be confirmed and qualified.

Vacancies,
how filled.

1 Debates, 549; 2 Debates, 341, 349, 700, 821, 843, 861, 870.

ARTICLE VIII.

PUBLIC DEBT AND PUBLIC WORKS.

SECTION 1. The state may contract debts, to supply casual deficits or failures in revenues, or to meet expenses not otherwise provided for; but the aggregate amount of such debts, direct and contingent, whether contracted by virtue of one or more acts of the general assembly, or at different periods of time, shall never exceed seven hundred and fifty thousand dollars; and the money, arising from the creation of such debts, shall be applied to the purpose for which it was obtained, or to repay the debts so contracted, and to no other purpose whatever.

Public debt.

See Art. VIII, § 3, note.

1 Debates, 292, 466-472; 2 Debates, 313, 314, 362, 363, 392, 424-426, 810, 837, 861, 870.

SEC. 2. In addition to the above limited power, the state may contract debts to repel invasion, suppress insurrection, defend the state in war, or to redeem the present outstanding indebtedness of the state; but the money, arising from the contracting of such debts, shall be applied to the purpose for which it was raised, or to repay such debts, and to no other purpose whatever; and all debts, incurred to redeem the present outstanding indebtedness of the state, shall be so contracted as to be payable by the sinking fund, hereinafter provided for, as the same shall accumulate.

Additional
debt, and for
what pur-
poses.

See Art. VIII, § 3, Note; Art. II, § 28, note 1.

1 Debates, 292, 466, 472; 2 Debates, 312-314, 426, 810, 837, 861, 870.

The state to
create no
other debt.

SEC. 3. Except the debts above specified in sections one and two of this article, no debt whatever shall hereafter be created by, or on behalf of the state.

The natural and obvious meaning of the first three sections of this article applies their limitations to the state alone, and not to her subdivisions. *Cass v. Dillon*, 2 Ohio St., 608; *Walker v. Cincinnati*, 21 Ohio St., 14-52.

The Board of Public Works made contracts on behalf of the state, stipulating to pay yearly, for the period of five years, for materials and repairs of the canals of the state, an amount in the aggregate of \$1,375,000. Held: 1. That, except in certain specified cases, no debt of any kind can be created on behalf of the state. 2. That no officers of the state can enter into any contract, except in cases specified in the Constitution, whereby the General Assembly will, two years after, be bound to make appropriations either for a particular object or a fixed amount; the power and the discretion, intact, to make appropriations, in general, devolving on each biennial General Assembly, and for the period of two years. 3. The contracts of the Board of Public Works creating a present obligation to pay for the period of five years a certain amount, do not come within said constitutional exceptions, and are in contravention of the provisions of Art. VIII, § 3, and Art. II, § 2. *State v. Medberry*, 7 Ohio St., 522.

1 Debates, 292, 466, 472; 2 Debates, 313, 314, 426, 810, 837, 861, 870.

Credit of
state.

The state
shall not be-
come joint
owner or
stockholder.

SEC. 4. The credit of the state shall not, in any manner, be given or loaned to, or in aid of, any individual association or corporation whatever; nor shall the state ever hereafter become a joint owner, or stockholder, in any company or association in this state, or elsewhere, formed for any purpose whatever.

It was competent for the Legislature, under the Constitution of 1802, to construct works of internal improvement, on behalf of the state, or to aid in their construction by subscribing to the capital stock of corporations created for that purpose, and to levy taxes to raise the means; and, by an exercise of the same power, to authorize a county or township to subscribe to a work of that character running through or into such county or township, and to levy a tax to pay the subscription. *C. W. & Z. R. R. Co. v. Com. of Clinton Co.*, 1 Ohio St., 77; *S. & I. R. R. Co. v. North Tp.*, *Ib.*, 105; *Loomis v. Spencer*, *Ib.*, 153; *Cass v. Dillon*, 2 Ohio St., 608; *Thompson v. Kelley*, *Ib.*, 647; *State v. Com. of Clinton Co.*, 6 Ohio St., 280; *State v. Van Horne*, 7 Ohio St., 327; *State v. Union Tp.*, 8 Ohio St., 394; *Paris Tp. v. Cherry*, *Ib.*, 564; *Treadwell v. Com. of Hancock Co.*, 11 Ohio St., 183; *State v. Com. of Hancock Co.*, 12 Ohio St., 596; *Goshen Tp. v. Shoemaker*, *Ib.*, 624; *Com. of Knox Co. v. Nichols*, 14 Ohio St., 260; *Fosdick v. Perrysburg*, *Ib.*, 472; *Shoemaker v. Goshen Tp.*, *Ib.*, 569; *Walker v. Cincinnati*, 21 Ohio St., 14-43.

1 Debates, 292, 466, 472; 2 Debates, 313, 314, 426, 427, 810, 837, 861, 870.

SEC. 5. The state shall never assume the debts of any county, city, town, or township, or of any corporation whatever, unless such debt shall have been created to repel invasion, suppress insurrection, or defend the state in war.

No assumption of debts by the state.

“The clear implications of this section are, that counties, cities, towns and townships may create debts to repel invasion, suppress insurrection, or defend the state in war, which the state may assume; and may also create debts for other purposes, which the state is forbidden to assume.” *Walker v. Cincinnati*, 21 Ohio St., 14-52—Scott, C. J.

1 Debates, 292, 467, 472, 538; 2 Debates, 295, 313, 314, 427, 810, 837, 861, 870.

SEC. 6. The general assembly shall never authorize any county, city, town, or township, by vote of its citizens, or otherwise, to become a stockholder in any joint stock company, corporation, or association whatever; or to raise money for, or loan its credit to, or in aid of, any such company, corporation, or association.

Counties, cities, towns, or townships, not authorized to become stockholders, etc.

What the General Assembly is thus prohibited from doing directly, it has no power to do indirectly. *Taylor v. Com. of Knox Co.*, 22 Ohio St.

Where public credit or money is furnished by any of the subdivisions of the state named, to be used in part construction of the work which, under the statute authorizing its construction, must be completed, if completed at all, by other parties out of their own means, who are to own or have the municipal control and management of the work when completed, the public money or credit thus used can only be regarded as furnished for or in aid of such parties *Ib.*

The act of April 23, 1872, to authorize counties, townships and the municipalities therein named to build railroads (69 O. L., 84), authorizes the raising of money by taxation, which is equally applicable to the unlawful purpose of aiding railroad companies and others engaged in building and operating railroads as it is to any lawful purpose, and gives to the officers intrusted with the control and application of the money thus raised no means or power of discrimination as to the lawfulness or unlawfulness of the work or purpose to which it is to be applied, and thus is in contravention of section six, article eight, of the Constitution, and therefore void. *Ib.*

“The mischief which this section interdicts is a business partnership between a municipality or subdivision of the state, and individuals or private corporations or associations. It forbids the union of public and private capital or credit in any enterprise whatever. In no project originated by individuals, whether associated or otherwise, with a view to gain, are the municipal bodies named permitted to participate in such manner as to incur pecuniary expense or liability. They may neither become stockholders nor furnish money or credit for the benefit of the parties interested therein. Though joint stock companies, corporations and associations only are named, we do not doubt that the reason of prohibition would render it applicable to the case of a single individual. The evil would be the same, whether the public suffered

from the cupidity of a single person, or from that of several persons associated together. As this alliance between public and private interests is clearly prohibited in respect to all enterprises, of whatever kind, if we hold that these municipal bodies cannot do on their own account what they are forbidden to do on the joint account of themselves and private partners, it follows that they are powerless to make any improvement, however necessary, with their own means, and on their own sole account. We may be very sure that a purpose so unreasonable was never entertained by the framers of the Constitution."

Walker v. Cincinnati, 21 Ohio St., 14-54, 55—Scott, C. J.

The act of May 4, 1869, "relating to cities of the first class having a population exceeding one hundred and fifty thousand inhabitants" (66 O. L., 80), authorizing such cities to construct a railroad terminating in and essential to the interests of themselves, and to borrow, as a fund for that purpose, a sum of money not exceeding ten millions of dollars, violates neither the express nor implied prohibitions of this section. *Walker v. Cincinnati*, 21 Ohio St., 14, affirming 1 Cin. Sup. C. Rep., 121.

The act of March 29, 1867 (S. & S., 671), "to authorize the county commissioners to construct roads on petition of a majority of resident land-owners along and adjacent to the line of said road," etc., does not violate this section. *State v. Com. of Warren Co.*, 17 Ohio St., 558.

This section plainly refers to future legislation alone, and the acts it prohibits are not subscriptions under laws existing at the time of the adoption of the new Constitution, but the making of any more such laws. *Cass v. Dillon*, 2 Ohio St., 608; *State v. Trustees of Union Township*, 8 Ohio St., 394; *Com. of Knox Co. v. Nichols*, 14 Ohio St., 260; *State v. Perrysburg*, 14 Ohio St., 472; *Thompson v. Kelly*, 2 Ohio St., 647; and see Art. VIII, § 4, Note.

1 Debates, 292, 467, 472, 538; 2 Debates, 300-314, 427, 810, 837, 861, 870.

Sinking
fund.

SEC. 7. The faith of the state being pledged for the payment of the public debt, in order to provide therefor, there shall be created a sinking fund, which shall be sufficient to pay the accruing interest on such debt, and, annually, to reduce the principal thereof, by a sum not less than one hundred thousand dollars, increased yearly, and each and every year, by compounding, at the rate of six per cent. per annum. The said sinking fund shall consist, of the net annual income of the public works and stocks owned by the state, of any other funds or resources that are, or may be, provided by law, and of such further sum, to be raised by taxation, as may be required for the purposes aforesaid.

1 Debates, 292, 467, 472-474, 476-492, 495-512, 514-524; 2 Debates, 295-299, 312-314, 427, 810, 837, 861, 870.

The commis-
sioners of
the sinking
fund.

SEC. 8. The auditor of state, secretary of state, and attorney general, are hereby created a board of commissioners, to be styled, "The Commissioners of the Sinking Fund."

1 Debates, 292, 467, 524; 2 Debates, 313, 314, 427, 810, 837, 861, 870.

SEC. 9. The commissioners of the sinking fund shall, immediately preceding each regular session of the general assembly, make an estimate of the probable amount of the fund, provided for in the seventh section of this article, from all sources except from taxation, and report the same, together with all their proceedings relative to said fund and the public debt, to the governor, who shall transmit the same with his regular message, to the general assembly; and the general assembly shall make all necessary provision for raising and disbursing said sinking fund, in pursuance of the provisions of this article.

Their bien-
nial report.

1 Debates, 292, 467, 524-537; 2 Debates, 299, 313, 314, 427, 810, 837, 861, 870.

SEC. 10. It shall be the duty of said commissioners faithfully to apply said fund, together with all moneys that may be, by the general assembly, appropriated to that object, to the payment of the interest, as it becomes due, and the redemption of the principal of the public debt of the state, excepting only the school and trust funds held by the state.

Application
of sinking
fund.

1 Debates, 292, 467, 537, 538; 2 Debates, 313, 314, 427, 810, 837, 861, 870.

SEC. 11. The said commissioners shall, semi-annually, make a full and detailed report of their proceedings to the governor, who shall, immediately, cause the same to be published, and shall also communicate the same to the general assembly, forthwith, if it be in session, and if not, then at its first session after such report shall be made.

Semi-annual
report.

1 Debates, 292, 467, 537, 538; 2 Debates, 313, 314, 427, 810, 837, 838, 861, 870.

SEC. 12. So long as this state shall have public works which require superintendence, there shall be a board of public works, to consist of three members, who shall be elected by the people, at the first general election after the adoption of this constitution, one for the term of one year, one for the term of two years, and one for the term of three years; and one member of said board shall be elected annually thereafter, who shall hold his office for three years.

Board of
public
works.

1 Debates, 292, 467, 537, 538; 2 Debates, 300, 362, 427, 810, 838, 861, 870.

SEC. 13. The powers and duties of said board of public works, and its several members, and their compensation, shall be such as now are, or may be prescribed by law.

Their pow-
ers, duties,
and compen-
sation.

No powers can be exercised by the board under laws existing when the Constitution took effect, unless such laws are consistent with the provisions of the Constitution. *State v. Medberry*, 7 Ohio St., 522. "The laws referred to are only such as are in harmony with the Constitution." *Ib.*, 544—Swan, J.; and see *Art. VIII, § 3, Note*.

1 Debates, 292, 467, 538; 2 Debates, 427, 810, 838, 861, 862, 870.

ARTICLE IX.

MILITIA.

Who shall perform military duty.

SEC. 1. All white (1) male citizens, residents of this state, being eighteen years of age, and under the age of forty-five years, shall be enrolled in the militia, and perform military duty, in such manner, not incompatible with the constitution and laws of the United States, as may be prescribed by law. (2)

(1) *See Art. V, § 1, Note 1.*

(2) *See Art. XII, § 1, Note.*

1 Debates, 191, 449-458, 461-464; 2 Debates, 220, 346-352, 651, 687, 688, 695, 821, 843, 862, 870.

What officers to be elected, and by whom.

SEC. 2. Majors general, brigadiers general, colonels, lieutenant colonels, majors, captains, and subalterns, shall be elected by the persons subject to military duty, in their respective districts. (*See Const. 1802, Art. V.*)

1 Debates, 191, 464-466; 2 Debates, 220, 346, 350, 651, 688, 695, 821, 843, 862, 870.

Same subject.

SEC. 3. The governor shall appoint the adjutant general, quartermaster general, and such other staff officers, as may be provided for by law. Majors general, brigadiers general, colonels, or commandants of regiments, battalions, or squadrons, shall, severally, appoint their staff, and captains shall appoint their non-commissioned officers and musicians. (*See Const. 1802, Art. V.*)

1 Debates, 191, 465, 466; 2 Debates, 220, 346, 348, 350, 651, 688, 695, 821, 843, 862, 870.

Governor to commission officers, and have power to call forth the militia.

SEC. 4. The governor shall commission all officers of the line and staff, ranking as such; and shall have power to call forth the militia, to execute the laws of the state, to suppress insurrection, and repel invasion. (*See Const. 1802, Art. V.*)

"The faithful execution of the laws when enacted, expounded and applied by the courts to cases when necessary, is confided to the executive. The militia is an arm of the executive power. . . . Not a word is found in the Constitution giving countenance to the opinion sometimes expressed, and more frequently felt, that the militia, or military force, instead of being a means to be employed by the executive department in executing the important duty of executing the laws, are a distinct department, equal to either of the others, and independent of their control." *State v. Coulter*, Wright's Rep., 421-424, 425.

2 Debates, 350, 651, 688, 695, 821, 843, 862, 870.

Public arms.

SEC. 5. The general assembly shall provide, by law, for the protection and safe keeping of the public arms.

1 Debates, 191, 466; 2 Debates, 220, 346, 651, 688, 695, 821, 843, 862, 870.

ARTICLE X.

COUNTY AND TOWNSHIP ORGANIZATIONS.

SEC. 1. The general assembly shall provide, by law, for the election of such county and township officers as may be necessary. (*See Const. 1802, Art. VI, § 1, 3.*)

County and township officers.

The Constitution did not create the municipalities of the state, nor does it attempt to enumerate their powers. It recognizes them as things already in being, with powers that will continue to exist, so far as they are consistent with the organic law, until modified or repealed. *Cass v. Dillon*, 2 Ohio St., 608.

2 Debates, 565, 640-642, 644, 654, 810, 838, 862, 870.

SEC. 2. County officers shall be elected on the second Tuesday of October, until otherwise directed by law, by the qualified electors of each county, in such manner, and for such term, not exceeding three years, as may be provided by law. (*See Const. 1802, Art. 6, § 1.*)

County officers, when elected.

The power to fix the times of holding elections for county officers is vested by the Constitution in the Legislature, and when a time has been so fixed by that body, any election for such officers held at a different time is unauthorized and void. *State v. Dombaugh*, 20 Ohio St., 167.

2 Debates, 565, 640-644, 654, 810, 838, 862, 870.

SEC. 3. No person shall be eligible to the office of sheriff, or county treasurer, for more than four years, in any period of six years. (*See Const. 1802, Art. 6, § 1.*)

Eligibility of sheriff and treasurer.

2 Debates, 565, 643, 644, 654, 810, 838, 862, 870.

SEC. 4. Township officers shall be elected on the first Monday of April, annually, by the qualified electors of their respective townships, and shall hold their offices for one year, from the Monday next succeeding their election, and until their successors are qualified.

Township officers, when elected.

2 Debates, 565, 644, 654, 810, 825, 838, 862, 870.

SEC. 5. No money shall be drawn from any county or township treasury, except by authority of law.

County and township treasuries.

The board of county commissioners has no power, under the Constitution and laws of Ohio, to employ an attorney to prosecute criminal complaints before the examining magistrates of the county, except in cases in which the county, in its *quasi* corporate capacity, has a direct interest. Nor can the board of commissioners be compelled, by mandamus, to pay for such services out of the county treasury. *State v. Com. of Franklin Co.*, 21 Ohio St., 648.

2 Debates, 565, 644, 654, 810, 825, 838, 862, 870.

SEC. 6. Justices of the peace, and county and township officers, may be removed, in such manner and for such cause, as shall be prescribed by law.

What officers may be removed.

1 Debates, 298; 2 Debates, 151, 318, 566, 633, 664, 810, 838, 862, 870.

Local taxation.

SEC. 7. The commissioners of counties, the trustees of townships, and similar boards, shall have such power of local taxation, for police purposes, as may be prescribed by law.

The construction of drains by townships, in cases where the public health, convenience or welfare demands it, is within the meaning of "police purposes." *Sessions v. Crunkilton*, 20 Ohio St., 349.

2 Debates, 565, 644, 747, 748, 775, 794, 805, 833, 838, 862, 870.

ARTICLE XI.

APPORTIONMENT.

Apportionment for members of the general assembly.

Ratio of representation in house.

SECTION 1. The apportionment of this state for members of the general assembly, shall be made every ten years, after the year one thousand eight hundred and fifty-one, in the following manner: The whole population of the state, as ascertained by the federal census, or in such other mode as the general assembly may direct, shall be divided by the number "one hundred," and the quotient shall be the ratio of representation in the house of representatives, for ten years next succeeding such apportionment.

"The apportionment of the state must be regarded as made by the Convention, and none the less so because the approval of the people was made necessary to its ultimate effect. They but ratified and approved an act already done by their representatives in convention, and were not, in any correct sense, the authors of the act itself." *State v. Dudley*, 1 Ohio St., 437-442—Ranney, J.

"The Constitution apportions political power amongst the inhabitants of the state, as nearly equally as possible in proportion to numbers, without any regard whatever to property, or, indeed, to any other circumstance. Inhabitants alone are represented; a given number in one place exercise the same political power, as a like number in any other locality. Some departure from the absolute equality of numbers is allowed in favor of the inhabitants of small counties, in the constitution of the House of Representatives; but this in no wise changes the basis of representation from population to territory or property." *Ib.*

1 Debates, 460; 2 Debates, 5, 6, 708, 748, 767, 781, 811-813, 845, 846, 862, 870.

Same subject.

SEC. 2. Every, county having a population equal to one-half of said ratio, shall be entitled to one representative; every county, containing said ratio, and three-fourths over, shall be entitled to two representatives; every county, containing three times said ratio, shall be entitled to three representatives; and so on, requiring after the first two, an entire ratio for each additional representative.

1 Debates, 460; 2 Debates, 6, 708, 748-751, 782, 846, 862, 870.

SEC. 3. When any county shall have a fraction above the ratio, so large, that being multiplied by five, the result will be equal to one or more ratios, additional representatives shall be apportioned for such ratios, among the several sessions of the decennial period, in the following manner: If there be only one ratio, a representative shall be allotted to the fifth session of the decennial period; if there are two ratios, a representative shall be allotted to the fourth and third sessions, respectively; if three, to the third, second, and first sessions, respectively; if four, to the fourth, third, second, and first sessions, respectively.

Same subject.

1 Debates, 460; 2 Debates, 6, 708, 751-753, 756-766, 781, 782, 820, 846, 862, 870.

SEC. 4. Any county, forming with another county or counties, a representative district, during one decennial period, if it have acquired sufficient population at the next decennial period, shall be entitled to a separate representation, if there shall be left, in the district from which it shall have been separated, a population sufficient for a representative; but no such change shall be made, except at the regular decennial period for the apportionment of representatives.

Same subject.

1 Debates, 460; 2 Debates, 6, 708, 765, 766, 782, 846, 862, 870.

SEC. 5. If, in fixing any subsequent ratio, a county, previously entitled to a separate representation, shall have less than the number required by the new ratio for a representative, such county shall be attached to the county adjoining it, having the least number of inhabitants; and the representation of the district, so formed, shall be determined as herein provided.

Same subject.

1 Debates, 460; 2 Debates, 6, 708, 766, 767, 782, 846, 862, 870.

SEC. 6. The ratio for a senator shall, forever hereafter, be ascertained, by dividing the whole population of the state by the number thirty-five.

Ratio for a senator.

1 Debates, 460; 2 Debates, 7, 708, 766, 782, 846, 862, 870.

SEC. 7. The state is hereby divided into thirty-three senatorial districts, as follows: The county of Hamilton shall constitute the first senatorial district; the counties of Butler and Warren, the second; Montgomery and Preble, the third; Clermont and Brown, the fourth; Greene, Clinton and Fayette, the fifth; Ross and Highland, the sixth; Adams, Pike, Scioto and Jackson, the seventh; Lawrence, Gallia, Meigs and Vinton, the eighth; Athens, Hocking and Fairfield, the ninth; Franklin, and Pickaway, the tenth; Clarke, Champaign and Madison, the eleventh; Miami, Darke and Shelby, the twelfth; Logan, Union, Marion and Hardin, the thirteenth; Washington and Morgan, the fourteenth; Muskingum and Perry, the fifteenth; Delaware and Licking, the sixteenth; Knox and Morrow, the seventeenth; Coshocton and Tuscarawas, the eighteenth; Guernsey and Monroe, the nineteenth; Belmont and Harrison, the twentieth; Carroll and Stark, the twenty-first; Jefferson and Columbiana, the twenty-second; Trumbull and Mahoning,

Senatorial districts.

the twenty-third; Ashtabula, Lake and Geauga, the twenty-fourth; Cuyahoga, the twenty-fifth; Portage and Summit, the twenty-sixth; Medina and Lorain, the twenty-seventh; Wayne and Holmes, the twenty-eighth; Ashland and Richland, the twenty-ninth; Huron, Erie, Sandusky and Ottawa, the thirtieth; Seneca, Crawford and Wyandot, the thirty-first; Mercer, Auglaize, Allen, Van Wert, Paulding, Defiance and Williams, the thirty-second; and Hancock, Wood, Lucas, Fulton, Henry and Putnam, the thirty-third: For the first decennial period, after the adoption of this constitution, each of said districts shall be entitled to one senator, except the first district, which shall be entitled to three senators.

“The whole state is divided into districts, and the limits of each clearly and definitely fixed. These limits were, in every instance, described by county lines, as they existed when the Constitution was adopted by the Convention—the boundaries of counties being referred to and adopted, from convenience and propriety, as the boundaries of districts; and thus making the limits of each district as certain as though it had been marked out by natural or artificial objects. While the counties remained, as they then were, of course, no one of them could be divided, so as to fall into different districts. But while the boundaries of counties, to a certain extent, and districts, were fixed upon the same lines, they were yet independent of each other; so that whatever changes might be made in county limits, the lines of the districts remained as before, subject only to such changes as are provided for in the Constitution itself.” *State v. Dudley*, 1 Ohio St., 437–443—Ranney, J.

1 Debates, 460, 461; 2 Debates, 7, 709, 710, 783–787, 822, 823, 846, 862, 870.

Same
subject.

SEC. 8. The same rules shall be applied, in apportioning the fractions of senatorial districts, and in annexing districts, which may hereafter have less than three-fourths of a senatorial ratio, as are applied to representative districts.

1 Debates, 460; 2 Debates, 7, 708, 766–771, 781, 782, 846, 862, 870.

Same
subject.

SEC. 9. Any county forming part of a senatorial district, having acquired a population equal to a full senatorial ratio, shall be made a separate senatorial district, at any regular decennial apportionment, if a full senatorial ratio shall be left in the district from which it shall be taken.

2 Debates, 708, 767, 782, 846, 863, 870.

Apportion-
ment of rep-
resentatives
for ten years.

SEC. 10. For the first ten years, after the year one thousand eight hundred and fifty-one, the apportionment of representatives shall be as provided in the schedule, and no change shall ever be made in the principles of representation, as herein established, or, in the senatorial districts, except as above provided. All territory, belonging to a county at the time of any apportionment, shall, as to the right of representation and suffrage, remain an integral part thereof, during the decennial period.

“The exception contained in this section refers to the eighth and

ninth sections. . . . The provisions of this section irrevocably fix the districts, and apportion the representation for ten years. At the expiration of that period, other sections of the eleventh article direct specifically in what manner the executive officers, charged with the duty, shall ascertain and fix it, for another period of ten years. It is manifest that no change, alteration, or modification of the representative districts, is allowed between the periods of decennial apportionment; unlike the senate districts, they are not forever to remain unchanged. On the contrary, they must, of necessity, at the expiration of each ten years, so change as to conform to the boundaries of counties, as they are then found to exist; and the limits of districts, at those periods, become again identical with those of counties." *State v. Dudley*, 1 Ohio St., 437-444, 446, 447—Ranney, J.

1 Debates, 460; 2 Debates, 7, 708, 767, 771, 782, 846, 863, 870.

SEC. 11. The governor, auditor and secretary of state, or any two of them, shall, at least six months prior to the October election, in the year one thousand eight hundred and sixty-one, and, at each decennial period thereafter, ascertain and determine the ratio of representation, according to the decennial census, the number of representatives and senators each county or district shall be entitled to elect, and for what years, within the next ensuing ten years, and the governor shall cause the same to be published, in such manner as shall be directed by law.

When the governor, auditor, and secretary of state to determine ratio of representation.

1 Debates, 460; 2 Debates, 7, 708, 767, 782, 846, 863, 870.

JUDICIAL APPORTIONMENT.

SEC. 12. For judicial purposes, the state shall be apportioned as follows:

Judicial purposes.

The county of Hamilton, shall constitute the first district, which shall not be subdivided; and the judges therein, may hold separate courts, or separate sittings of the same court, at the same time.

First district.

The counties of Butler, Preble and Darke, shall constitute the first subdivision, Montgomery, Miami and Champaign, the second, and Warren, Clinton, Greene and Clarke, the third subdivision, of the second district; and, together, shall form such district.

Second district.

The counties of Shelby, Auglaize, Allen, Hardin, Logan, Union and Marion shall constitute the first subdivision, Mercer, Van Wert, Putnam, Paulding, Defiance, Williams, Henry and Fulton, the second, and Wood, Seneca, Hancock, Wyandot and Crawford, the third subdivision, of the third district; and, together, shall form such district.

Third district.

The counties of Lucas, Ottawa, Sandusky, Erie and Huron, shall constitute the first subdivision, Lorain, Medina and Summit, the second, and the county of Cuyahoga, the third subdivision, of the fourth district; and, together, shall form such district.

Fourth district.

The counties of Clermont, Brown and Adams, shall constitute the first subdivision, Highland, Ross and Fayette, the second, and Pickaway, Franklin and Madison, the third

Fifth district.

subdivision, of the fifth district; and, together, shall form such district.

Sixth district.

The counties of Licking, Knox and Delaware, shall constitute the first subdivision, Morrow, Richland and Ashland, the second, and Wayne, Holmes and Coshocton, the third subdivision, of the sixth district; and, together, shall form such district.

Seventh district.

The counties of Fairfield, Perry and Hocking, shall constitute the first subdivision, Jackson, Vinton, Pike, Scioto and Lawrence, the second, and Gallia, Meigs, Athens and Washington, the third subdivision, of the seventh district; and, together, shall form such district.

Eighth district.

The counties of Muskingum and Morgan, shall constitute the first subdivision, Guernsey, Belmont and Monroe, the second, and Jefferson, Harrison and Tuscarawas, the third subdivision, of the eighth district; and, together, shall form such district.

Ninth district.

The counties of Stark, Carroll and Columbiana, shall constitute the first subdivision, Trumbull, Portage and Mahoning, the second, and Geauga, Lake and Ashtabula, the third subdivision, of the ninth district; and, together, shall form such district.

2 Debates, 823, 824, 840, 841, 846, 847, 863, 870.

New counties attached.

SEC. 13. The general assembly shall attach any new counties, that may hereafter be erected, to such districts, or subdivisions thereof, as shall be most convenient.

“This section very clearly applies to any new county erected after the adoption of the Constitution by the Convention. This construction does not require any effect to be given to the Constitution before the first of September, but after it has taken effect, it directs the General Assembly what to do with counties erected after the tenth of March; or, in other words, it imperatively requires the General Assembly, acting under the Constitution, to attach all counties created after that date, to some convenient district and subdivision.” *State v. Dudley*, 1 Ohio St., 437-449, 450—Ranney, J.

2 Debates, 824, 847, 863, 870.

ARTICLE XII.

FINANCE AND TAXATION.

Poll tax.

SEC. 1. The levying of taxes, by the poll, is grievous and oppressive; therefore, the general assembly shall never levy a poll tax, for county or state purposes. (*See Const. 1802, Art. VIII, § 23.*)

The sum demanded for license to pursue an employment, when used as a means of supplying the public treasury, is a tax on such employment. *Mays v. Cincinnati*, 1 Ohio St., 268; *Cincinnati v. Bryson*, 15 Ohio, 625; *Cincinnati v. Buckingham*, 10 Ohio, 257-261; *State v. Proudfit*; *State v. Hibbard*, 3 Ohio, 63.

The fourth section of the act of March 31, 1864, “to organize and discipline the militia of Ohio” (61 O. L., 110), which provides that

“all persons subject to military duty, and who are not members of some volunteer organization, shall either become members of some volunteer organization, or shall pay into the county treasury, annually, the sum of four dollars, which sum shall be a commutation for fines and penalties for neglect to perform military service,” etc., is not in conflict with this section. Such commutation is not a tax, but is only a means, or instrumentality, by which the General Assembly enforces, to the extent deemed necessary, the performance of military duty enjoined by Art. IX, § 1. *Houston v. Wright*, 15 Ohio St., 318.

1 Debates, 513; 2 Debates, 34, 35, 119, 651, 723, 744-747, 755, 789, 793, 818, 819, 831, 839-842, 851, 863, 870.

SEC. 2. Laws shall be passed, taxing, (1) by a uniform rule, all moneys, credits, (2) investments in bonds, stocks, (3) joint stock companies, or otherwise; and also all (4) real and personal property, (5) according to its true value in money; (6) but burying grounds, public school houses, houses used exclusively for public worship, institutions of purely public charity, public property used exclusively for any public purpose; and personal property, to an amount not exceeding in value two hundred dollars, for each individual, may, by general laws, be exempted from taxation; (7) but, all such laws shall be subject to alteration or repeal; and the value of all property, so exempted, shall, from time to time, be ascertained and published, as may be directed by law. (8)

Taxation by uniform rule.

(1) “The power of taxation is included in the legislative power. In our former Constitution, it was limited in one particular, the prohibition of a poll tax. In the present, it is regulated or limited in other particulars. This section is not a grant of power, but a regulation of the power already granted in the first section of the second article. The expression is, ‘laws shall be passed;’ not that the ‘General Assembly shall have power to pass.’ So of every provision in the twelfth article, they either prohibit or regulate the exercise of the power of taxation in specified instances.” *Baker v. Cincinnati*, 11 Ohio St., 534-543—Gholson, J.

Assessments are not embraced within the meaning of the word “taxing” in this section. *Reeves v. Treas. of Wood Co.*, 8 Ohio St., 333; *Ridenour v. Saffin*, 1 Handy’s Rep., 464. See Art. XIII, § 6, note 3.

(2) The Constitution permits no deduction of liabilities from moneys and credits. *Exchange Bank v. Hines*, 3 Ohio St., 1; *Ellis v. Linck*, Ib., 66; *Latimer v. Morgan*, 6 Ohio St., 279.

(3) The state has power to tax shares in the national banks located in Ohio, subject to the limitations that such tax shall not exceed the rate imposed upon other moneyed capital of individuals, nor that imposed upon shares in the state banks, as provided in the act of Congress of June 3, 1864. *Frazer v. Siebern*, 16 Ohio St., 614.

The shares in national banks thus to be taxed, are to be understood as the individual property or choses of the stockholders, as contradistinguished from aliquot parts of the capital and property of the bank, and, as such, may be taxed at their full value, without deduction for

the franchise, for real estate otherwise taxed, or for untaxable bonds owned by the bank. *Ib.*

(4) The property of every person, however absolute the tenure by which it is held, must be liable to bear an equal and just proportion of the public burdens, by way of taxation, in return for the protection and advantages afforded by the government, and that proportion of taxation, must be determined by the legislative power, which extends to all persons and property within the state. *Toledo Bank v. Bond*, 1 Ohio St., 623.

All exemptions of any part of the property in a municipal corporation, otherwise subject to taxation, from contributing to the general revenue fund, are in conflict with this section. *Zanesville v. Richards*, 5 Ohio St., 589.

The fact that property subject to taxation has not been listed, although it improperly increases the burden of taxation on the property that is listed, does not render the tax wholly void, or authorize the interference of a court of equity. *Exchange Bank v. Hines*, 3 Ohio St., 1.

(5) An express direction to impose a tax on all property by a uniform rule, does not necessarily exclude taxation upon that which is not property, or cover the whole ground included within the limits of the taxing power. *Zanesville v. Richards*, 5 Ohio St., 589-593; *Baker v. Cincinnati*, 11 Ohio St., 540; *Cin. Gas L. & C. Co. v. State*, 18 Ohio St., 243.

A license cannot be regarded as property of any description, and consequently is not subject to taxation under this section. But a charge may be exacted for it. Although authority to exact payment for a license is not expressly conferred in the Constitution, yet the exercise of the power not being prohibited, and not being inconsistent with any constitutional provisions, the General Assembly may lawfully confer such power. *Exchange Bank v. Hines*, 3 Ohio St., 1; *Baker v. Cincinnati*, 11 Ohio St., 534; *Cin. Gas L. & C. Co. v. State*, 18 Ohio St., 243.

(6) Choses in action are to be listed at their true value. If a note, for instance, is wholly worthless, it is not to be listed at all; if it is of some value, but less than its face, it is to be listed at what it is worth. *Exchange Bank v. Hines*, 3 Ohio St., 1.

(7) "Power was thus conferred on the Legislature to reserve certain classes of property, but the absolute right was asserted to tax every species of property, by whomsoever owned, and it was not their duty, under all circumstances, to make the reservation; they might exercise the authority or not, as they should deem it just and consistent with the higher claim of the government; the law in which the reservation should be made, being always subject to alteration and repeal." *Matlack v. Jones*, 2 Disney's Rep., 5—Storer, J.

(8) This section is equally applicable to, and furnishes the governing principle for, all laws levying taxes for general revenue, whether for state, county, township or municipal purposes. *Zanesville v. Richards*, 5 Ohio St., 589; *Hill v. Higdon*, 5 Ohio St., 243; *Reeves v. Treas. of Wood Co.*, 8 Ohio St., 333; *Baker v. Cincinnati*, 11 Ohio St., 534; *Cin. Gas L. & C. Co. v. State*, 18 Ohio St., 237; *Ridenour v. Saffin*, 1 Handy's Rep., 464.

Section three of the act of April 6, 1866, "for the inspection of gas meters," etc. (S. & S., 158), providing that the salary of the inspector

of gas meters and illuminating gas shall be paid by the several gas light companies in this state, in amounts proportionate to their appraised valuation, is not in conflict with this section. *Cin. Gas L. & C. Co. v. State*, 18 Ohio St., 237.

1 Debates, 513; 2 Debates, 35-116, 124-130, 651, 723-742, 754, 755, 789, 793, 818, 819, 826, 828, 830, 831, 839-842, 851, 852, 863, 870.

SEC. 3. The general assembly shall provide, by law, for taxing the notes and bills discounted or purchased, moneys loaned, and all other property, (1) effects, or dues, of every description (without deduction), (2) of all banks, now existing, or hereafter created, and of all bankers, (3) so that all property employed in banking, shall always bear a burden of taxation, equal to that imposed on the property of individuals. (4) Same subject.

(1) Moneys deposited with a bank or banker (unless specially deposited) become the moneys of the bank or banker, appertaining to the business of banking, and proper to be listed with the other moneys belonging to that business; and this is equally true of general deposits, whether they happen to be used in the discounting of paper, or held in reserve to pay probable current demands. *Ellis v. Linck*, 3 Ohio St., 66.

Under the 19th section of the tax law of April 13, 1852 (Swan's R. S., 906), all the assets and resources of a bank, whether specie or balances in other banks, must, if employed in any manner whereby the bank obtains or reserves a per cent., premium, profit, or a consideration, be averaged for taxation. Specie unemployed, not on hand for sale, and from which the bank derives no profit, etc., is not required to be returned to the assessor. So balances due from other banks, upon which no interest, profit or consideration is reserved or received, are not required to be returned to the assessor. *Stark County Bank v. McGregor*, 6 Ohio St., 45. (See preceding section, note 3.)

(2) Bankers (although private) cannot deduct their debts from their moneys and credits. *Ellis v. Linck*, 3 Ohio St., 66. And see *Exchange Bank v. Hines*, Ib. 1.

(3) Under the act of April 12, 1858 (55 O. L., 128), a partnership engaged in the business of banking was liable as such to the tax imposed by that act. *Robinson v. Ward*, 13 Ohio St., 293.

Persons having money employed in the business described in the 15th section of the tax law of April 13, 1852 (Swan's R. S., 906), are bankers, such as are forbidden to make deductions by this section of the Constitution. *Ellis v. Linck*, 3 Ohio St., 66.

(4) The tax law of April 13, 1852 (Swan's R. S., 906), is valid and constitutional in the basis it provides for the taxation of banks, bankers and brokers. The tenth section of that law, which allows individuals and certain corporations, in giving their tax lists, to deduct their liabilities from the amount of their moneys and credits, is repugnant to the Constitution of Ohio, and is void. But that section may be treated as void without affecting the validity of the remainder of the act. The remainder of the act permits no such deduction. *Exchange Bank v. Hines*, 3 Ohio St., 1, followed and approved in *Ellis v. Linck*, Ib. 66.

"This section was inserted that there might be no doubt how existing as well as future banks and bankers, whether incorporated or unincorporated, were to be taxed; that there might be no doubt what property of theirs was to be the object of taxation; and further, to deprive them of even the two hundred dollar exemption which may be permitted to individuals under section two. And hence it is that we find in it the words 'without deduction.' " *Exchange Bank v. Hines*, 3 Ohio St., 1-46—Thurman, J.

1 Debates, 513; 2 Debates, 116-119, 651, 664, 742-744, 755, 789-793, 818, 819, 828-831, 839-842, 851, 863, 870.

Revenue.

SEC. 4. The general assembly shall provide for raising revenue, sufficient to defray the expenses of the state, for each year, and also a sufficient sum to pay the interest on the state debt.

1 Debates, 513; 2 Debates, 119, 651, 748, 755, 789, 793, 818, 819, 831, 839-842, 851, 863, 870.

Levying of taxes.

SEC. 5. No tax shall be levied, except in pursuance of law; and every law imposing a tax, shall state, distinctly, the object of the same, to which only, it shall be applied.

The power of taxation being a sovereign power, can only be exercised by the General Assembly when, and as conferred, by the Constitution; and by municipal corporations only when unequivocally delegated to them by the legislative body. *Mays v. Cincinnati*, 1 Ohio St., 268.

The right of taxation, vital to the existence of every government, and one of the most important incidents of sovereignty, has only been delegated to the General Assembly, to be used for the purpose of accomplishing the lawful objects with which it is charged. It can only be exercised to raise money for these purposes; and any attempt to use it otherwise, or to control or abridge the right itself, is beyond the delegation, and an unauthorized assumption of power. *Debolt v. Ohio Life Ins. and Trust Co.*, 1 Ohio St., 563; *Toledo Bank v. Bond*, *Ib.*, 623.

1 Debates, 513; 2 Debates, 119, 651, 744, 748, 755, 789, 793, 818, 819, 831, 839-842, 851, 863, 870.

No debt for internal improvement.

SEC. 6. The state shall never contract any debt for purposes of internal improvement.

This restriction applies to the state alone, and not to her subdivisions. *Cass v. Dillon*, 2 Ohio St., 608.

See Art. VIII, § 4, Note.

1 Debates, 513; 2 Debates, 119-124, 651, 748, 754, 755, 789, 793, 818, 819, 831, 839-842, 851, 863, 870.

ARTICLE XIII.

CORPORATIONS.

Corporate powers.

SECTION 1. The general assembly shall pass no special act conferring corporate powers.

The charter of the Marietta and Cincinnati Railroad Company did not authorize it to mortgage or sell its corporate franchise to be a cor-

poration; and a judicial sale upon mortgages executed by it, would not invest the purchasers with any corporate capacity whatever. A "special act" of the General Assembly, undertaking to give such an effect to the sale, and authorizing the purchasers to reorganize, create a new stock, and elect another board of directors, is, in substance and legal effect, an attempt to create a corporation and confer corporate powers by a special act, and is in conflict with this and the following section. *Atkinson v. M. & C. R. R. Co.*, 15 Ohio St., 21. And see *Art. XIII, § 6, Note 2.*

This section in its terms merely prohibits future special legislation conferring corporate powers, and does not, expressly nor by implication, abrogate former legislation of that character. *Citizens' Bank v. Wright*, 6 Ohio St., 318; *State v. Roosa*, 11 Ohio St., 16-25; *State v. Union Tp.*, 8 Ohio St., 394-400. And see the first note to following section.

1 Debates, 260, 340-363, 447, 458; 2 Debates, 644-650, 654-659, 667, 675, 851, 863, 870.

SEC. 2. Corporations may be formed under general laws; but all such laws may, from time to time, be altered or repealed. Corporations, how formed.

On March 22, 1850, prior to the adoption of this Constitution, the General Assembly passed a special act incorporating the Cincinnati, Lebanon and Xenia Railroad Company, authorizing commissioners therein named to open books, receive subscriptions to capital stock, and thereupon to organize a corporation under it. No steps were taken by the commissioners toward such subscription and organization until after this Constitution took effect, but such subscriptions were made and organization effected within the period limited by the special act for that purpose. Held: 1. That the special act was not abrogated or repealed by this section of the Constitution. 2. This section is prospective, and not retrospective, in its intent and application, conferring merely an authority to legislate, and does not repeal unaccepted acts of incorporation, enacted under the Constitution of 1802. *State v. Roosa*, 11 Ohio St., 16; *C. W. & Z. R. R. Co. v. Com. of Clinton Co.*, 1 Ohio St., 77; *Cass v. Dillon*, 2 Ohio St., 607-623; *Citizens' Bank v. Wright*, 6 Ohio St., 318; *State v. Van Horne*, 7 Ohio St., 327; *State v. Union Tp.*, 8 Ohio St., 394-400; *Com. of Knox Co. v. Nichols*, 14 Ohio St., 260; *Fosdick v. Perrysburg*, *Ib.*, 472.

A county is not properly a corporation, but is at most but a local organization, which, for purposes of civil administration, is invested with a few functions characteristic of a corporate existence. *C. W. & Z. R. R. Co. v. Com. of Clinton Co.*, 1 Ohio St., 77-89; *Com. of Hamilton Co. v. Mighels*, 7 Ohio St., 109; *Hunter v. Com. of Mercer Co.*, 10 Ohio St., 520; *State v. Cincinnati*, 20 Ohio St., 18-37; *Boalt v. Com. of Williams Co.*, 18 Ohio, 13-16.

Where a corporation, in pursuance of an act of the Legislature, transfers or conveys its franchise to be a corporation to others, the transaction, in legal effect, is a surrender or abandonment of its charter by the corporation, and a grant by the Legislature of a similar charter to the transferees or purchasers; and the charter so granted is

subject to all the provisions of the Constitution existing at the time it is so granted. *State v. Sherman*, 22 Ohio St., 411.

The act of April 4, 1863 (S. & S., 131), authorizing the purchasers of the property of a railroad company to acquire the franchise to be a corporation by deed from the company, is a general law within the meaning of this section of the Constitution. *Ib.*

But a deed made by such company to a corporation of another state, which corporation had become the assignee of property sold as contemplated in said act, without any new organization, or taking of stock, under the deed, or as a corporation of Ohio, does not constitute the foreign corporation, or its members, an Ohio corporation, and in so far as said act may assume to create them such, it is unconstitutional, for the reason that it does not secure the individual liability of the stockholders. *Ib.* See first note to following section.

1 Debates, 260, 363-369, 458; 2 Debates, 644, 659-662, 675, 676, 851, 863, 870.

Dues from
corpora-
tions, how
secured.

SEC. 3. Dues from corporations shall be secured, by such individual liability of the stockholders, and other means, as may be prescribed by law; but, in all cases, each stockholder shall be liable, over and above the stock by him or her owned, and any amount unpaid thereon, to a further sum, at least equal in amount to such stock.

The Legislature has no power, under the present Constitution of Ohio, to create corporations without securing the individual liability of their stockholders, at least to the minimum amount required by the Constitution; and if the act of incorporation does not secure this, either by express provision, or by requiring from the corporators or stockholders such acts, of organization or otherwise, as will subject them to the constitutional provision, the act will be unconstitutional and void. *State v. Sherman*, 22 Ohio St., 411.

The liability of individual stockholders is collateral to the principal obligation of the corporation, and is to be resorted to by the creditors only in case of the insolvency of the corporation, or where payment cannot be enforced against it by the ordinary process of execution. *Wright v. McCormack*, 17 Ohio St., 86; *Wehrman v. Reakirt*, 1 Cin. Sup. Court Rep., 230.

This section is prospective in its intent and application. *Citizens' Bank v. Wright*, 6 Ohio St., 318; *State v. Roosa*, 11 Ohio St., 17.

1 Debates, 260, 369-385, 387-430, 433-443, 458; 2 Debates, 644, 667, 668, 676, 851, 863, 870.

Corporate
property
subject to
taxation.

SEC. 4. The property of corporations, now existing or hereafter created, shall forever be subject to taxation, the same as the property of individuals.

A corporate franchise, being a mere privilege or grant of authority by the government, is not property of any description, and consequently not subject to taxation. *Exchange Bank v. Hines*, 3 Ohio St., 1-8; *Baker v. Cincinnati*, 11 Ohio St., 534-540.

"There was no absolute necessity for this section, for, without it,

section two of article twelve would have embraced these corporations."

Exchange Bank v. Hines, 3 Ohio St., 1-46—Thurman, J.

1 Debates, 260, 444, 458; 2 Debates, 659, 664-667, 676, 851, 863, 870.

SEC. 5. No right of way (1) shall be appropriated to the use of any corporation, (2) until full compensation (3) therefor be first made in money, or first secured by a deposit of money, (4) to the owner, irrespective of any benefit (5) from any improvement proposed by such corporation; which compensation shall be ascertained by a jury of twelve men, in a court of record, (6) as shall be prescribed by law. (7)

Right of
way.

(1) The General Assembly possesses the constitutional power to confer upon a corporation authorized to construct a railroad, the right to appropriate grounds necessary for its use for a depot. *Giesy v. C. W. & Z. R. R. Co.*, 4 Ohio St., 308.

Where an incorporated company has, by its charter, authority to construct a road between given points, and to appropriate land to the width of sixty feet over which to locate the same, and, when finished, to charge and collect tolls from travelers who pass over it: Held, that after the company has made such an appropriation of land for the purpose of its road, and freeholders have, in accordance with the provisions of the charter, ascertained and determined the owner's damage, it may, within the sixty feet of ground used for the road, build a toll-house and dig a well for the accommodation of the toll-gatherer. *Ward v. Marietta and Newport Turnpike and Bridge Co.*, 6 Ohio St., 15.

"Any other structure, within the sixty feet, and essential to the carrying out of the object sought by the corporators, and consonant with their charter, may, as an unavoidable and legitimate incident of the powers given them, be placed within the road limits." *Ib.*, 17—Bowen, J.

Under the general corporation act of 1852 (S. & C., 275, §§ 21, 27, 28), a railroad company has power to condemn land for new side tracks, leading from the main road to its depot buildings, whenever they become necessary in the proper management and operation of the road. *Toledo and Wabash R. R. Co. v. Daniels*, 16 Ohio St., 390.

Authority to lay down the necessary structure for a street railway, in a common highway or street, and to run cars thereon for the carriage of passengers for hire, may be lawfully granted to a company incorporated for that purpose, when no private right of the adjoining lot owners is thereby impaired. *Street Railway v. Cumminsville*, 14 Ohio St., 524.

A railroad company authorized to change the location of its track, on account of difficulty of construction and other causes, may do so at any time before the construction of its road is completed at the point where the change is made. *Atkinson v. M. & C. R. R. Co.*, 15 Ohio St., 21.

But having once located and constructed its road, the company can not re-locate it, and for that purpose appropriate private property. *Ib.* *Moorehead v. L. M. R. R. Co.*, 17 Ohio, 340.

So where the charter of a railroad company merely fixes a few points through which the road is to pass, from its commencement to its terminus, leaving the location of the road between the points specified to the discretion of the corporation, the railroad company having once located the road, their power to re-locate, and for that purpose to appropriate the property of an individual, has ceased. *L. M. R. R. Co. v. Naylor*, 2 Ohio St., 235.

The same principle applies, whether the case be that of an attempt to re-locate on the property of an individual, or that of using a street or highway for the purpose. *Ib.*

Grants of corporate power, being in derogation of common right, are to be strictly construed—particularly where the power claimed is a delegation of the sovereign power of eminent domain. Hence, where a railroad company is authorized by law only “to enter upon any land to survey, lay down and construct its road,” “to locate and construct branched roads from the main road to any town or places in the several counties through which the said road may pass,” to appropriate land for “necessary side tracks,” and “a right of way over adjacent lands sufficient to enable such company to construct and repair its road”; and such company has located, and is engaged in the construction of its permanent main road along the north side of a town, it is not authorized to appropriate a temporary right of way, for the term of three years, along the south side of the town, to be used as a substitute for the main track while the same is in course of construction along the north side of the town. *Currier v. M. & C. R. R. Co.*, 11 Ohio St., 228.

A railroad company organized under and made subject to the provisions of the “act regulating railroad companies,” of February 11, 1848 (§. & C., 271), is not authorized to condemn private property to its exclusive use solely for the purposes of a wharf. *Iron R. R. Co. v. Iron-ton*, 19 Ohio St., 299.

The power given to municipal corporations to condemn private property for a public wharf is an express power; and the right of a railroad company to hold property exempt from the exercise of this power cannot be extended, by construction, to lands held by the company for uses and purposes for which it is not, by law, authorized to condemn private property. *Ib.*

(2) Corporate existence, and the right to exercise the power of eminent domain, can only be derived from legislative enactment; and before a company can demand a judgment of condemnation, it must show that both have been conferred upon it by a valid law, and that it has substantially complied with the conditions which the law has annexed to the exercise of the power. *Atkinson v. M. & C. R. R. Co.*, 15 Ohio St., 21; *A. & O. R. R. Co. v. Sullivant*, 5 Ohio St., 276.

A delegation of the power of eminent domain to a corporation as a necessary means to carry into effect the grant of its franchises, cannot be made the subject of either grant or sale. *Coe v. C. P. & I. R. R. Co.*, 10 Ohio St., 372; *Atkinson v. M. & C. R. R. Co.*, 15 Ohio St., 21-36. (But see Art. XIII, § 2, note.)

(3) Where a piece or strip of land is, by appropriation made by a railroad company, severed from its connection with the other land of the owner, in estimating the compensation to be made to the owner,

not only is the abstract value of the strip or piece taken to be considered, but also its relative value, and the effect arising from its severance from the residue of the owner's land, as well as the uses to which it is to be appropriated. *C. & P. R. R. Co. v. Ball*, 5 Ohio St., 569.

Where a right of way originally appropriated for one public use is afterward taken for another, the owner of the fee simple title to the lands is entitled to recover a full and fair compensation for such additional burdens and inconveniences, not common to the general public, as accrue to him and his entire tract on which the easement is imposed, by reason of the change of uses to which the lands appropriated have been subjected. *Hatch v. C. & I. R. R. Co.*, 18 Ohio St., 92.

The rightful power of a canal company over the canal, in the absence of any statute or contract to limit it, being exclusive, any use of the waters of the canal for purposes of navigation, or for watering stock by the owner of the fee simple of the lands intersected by it being a matter of sufferance and not of right, the loss of these conveniences by reason of the change of use, whereby the canal-bed is transformed into the roadway of a railroad, does not constitute an element to be reckoned in estimating the amount of his compensation. *Ib.*

Nor is such owner entitled to recover damages on account of increased danger from fire to his buildings or other structures, by reason of such change of use, unless the proximity of his buildings, etc., to the railroad be such as to render the danger imminent and appreciable. *Ib.*

Where an entire tract of land is cut asunder by an appropriation of an easement upon it by a canal company, for the purpose of a canal; and this easement is afterward transferred by the canal company to a railroad company for the purpose of a railroad; and the latter, in the construction of its railroad, throws up embankments or excavates cuts across a common public highway, skirting the tract, and constituting the only convenient medium of access between the parcels into which the tract has been thus severed, the increased inconvenience and danger of access thus occasioned between the two parts of the tract are peculiar to the owner of the tract in the use of his property, not common to the public at large, and for this increase of inconvenience and danger, he is entitled to compensation. *Ib.*

See Art. I, § 19, note 5.

(4) See Art. I, § 19, Notes 5, 6.

(5) The provisions of article one, section nineteen, and of this section—the one requiring compensation to be made without deduction for benefits, when property is applied to a public use, and the other providing for compensation irrespective of benefits, where it is taken by a corporation for a right of way—are, in legal effect, identical. When taken under either section, its fair market value in cash, at the time it is taken, must be paid to the owner; and the jury, in assessing the amount, have no right to consider or make use of the fact, that it has been increased in value by the proposal or construction of the improvement. *Giesy v. C. W. & Z. R. R. Co.*, 4 Ohio St., 309.

In a proceeding by a railroad corporation for an appropriation of a right of way under the act of April 30, 1852 (S. & C., 311), the jury, after allowing for the full value of the land actually appropriated for the right of way, in view of all its uses and relations, without deduc-

tions for benefits of any kind, in their estimate and assessment of the incidental damages accruing to other lands of the owner, cannot legally take into consideration and make allowance for general benefits—or such as accrue to the community and vicinage at large—from the construction of the work proposed. Whether special benefits, or such as accrue directly and solely to the owner of the lands appropriated, may be taken into consideration and allowed for, *quere.* *L. M. R. R. Co. v. Collet*, 6 Ohio St., 182.

This question is answered in part by the following notes :

Where compensation is claimed for the location and construction of a railroad between coal mines and a navigable river on the land-owner's premises, whereby the conveniences of the river transportation for the coal to market were injured, or cut off, it is competent for the railroad company to show that the river transportation, in connection with the coal banks, had ceased to be valuable, or become of less value, by means of the facilities for coal transportation afforded by the railroad, for the purpose of reducing the damages. *C. & P. R. R. Co. v. Ball*, 5 Ohio St., 568.

In case of a railroad appropriation for a right of way through a tract of land, causing incidental and local injury to the residue of the tract, although general resulting benefits from the railroad to the value of such residue of the land cannot be taken into account in estimating the amount of compensation to be paid the owner; yet, where a local incidental benefit to the residue of the land is blended or connected, either in locality or subject matter, with a local incidental injury to such residue of the land, the benefit may be considered in fixing the compensation to be paid the owner, not by way of deduction from the compensation, but of showing the extent of the injury done the value of the residue of the land. *Ib.*

But in assessing the compensation for a local incidental injury to the residue of the owner's tract of land, arising from the appropriation of the right of way, and construction of a railroad, whether a local incidental benefit arising from the railroad structure to the residue of the tract, but not connected either in locality or subject matter with the injury, can be taken into the account in estimating the compensation for the damages, *quere.* *Ib.*

See Art. I, § 19, Note 8.

(6) "It had been held in *Willyard v. Hamilton*, 7 Ohio, 2 pt., 115, that the value of property taken for public uses might rightfully be assessed by commissioners, it not being a case for trial by jury, secured by the Constitution, and that the proceeding need not be had in a court of justice. And the reason why it was not secured by the Constitution was, that it had never been so regarded in England or this country prior to the adoption of that instrument. This course of proceeding by commissioners, had been much complained of as unjust and oppressive to the owner of the property; and to make at once a proceeding within the protection of the Constitution and to be pursued in a court of justice with a common law jury, this section was inserted, when the Constitution was revised. It intended to afford the party the same protection as in other cases of jury trial; no more and no less." *Work v. State*, 2 Ohio St., 296-307—Ranney, J.

See Art. I, § 19, Note 7.

(7) If a statute confer authority, as upon a company to construct works of public interest, or upon city authorities to improve streets, and provide the mode of rendering satisfaction or obtaining compensation, that mode must be followed. *L. M. R. R. Co. v. Whitacre*, 8 Ohio St., 590; *Hueston v. E. & H. R. R. Co.*, 4 Ohio St., 685; *Akron v. McComb*, 18 Ohio, 229.

But a rule of compensation and mode of ascertaining it, prescribed by a law passed prior to the adoption of the present Constitution, was abrogated by it and a new rule and mode of compensation thereby prescribed. *Perrysburg C. & H. Co. v. Fitzgerald*, 10 Ohio St., 513.

1 Debates, 260, 444-447, 458; 2 Debates, 644, 667, 668, 674-676, 841, 849-851, 863, 870.

SEC. 6. The general assembly shall provide for the organization of cities, and incorporated villages, (1) by general laws, (2) and restrict their power of taxation, (3) assessment, (4) borrowing money, contracting debts and loaning their credit, so as to prevent the abuse of such power. (5)

Organization
of cities, etc.

(1) The general act of May 3, 1852 (S. & C., 1493), "to provide for the organization of cities and incorporated villages," did not annihilate and recreate the municipal corporations of the state, but recognized and continued them, leaving their corporate identity unaffected. *Fosdick v. Perrysburg*, 14 Ohio St., 473.

The power conferred on the General Assembly by this section, to organize municipal corporations for local government, involves that of bestowing on them authority to provide the necessary means, by taxation and assessment, for sustaining and carrying out the objects of such government. Were it otherwise, the latter clause directing the Assembly to "restrict such power of taxation and assessment," presupposes its existence. *Ridenour v. Saffin*, 1 Handy's Rep., 464.

The power of creating municipal corporations necessarily implies authority to confer upon them such police powers as may be necessary for their internal government; and a resolution of a city council requiring lots, on which is stagnant water, to be filled up, being a reasonable sanitary measure for preserving the health of the inhabitants, is not in conflict with the Constitution. *Bliss v. Kraus*, 16 Ohio St., 54.

Proceedings to annex contiguous territory to the corporate limits of a town, in pursuance of the fourteenth section of the act to provide for the organization of cities and incorporated villages (S. & C., 1497), are not in contravention of the provisions of the Constitution. *Powers v. Com. of Wood Co.*, 8 Ohio St., 285; *Blanchard v. Bissell*, 11 Ohio St., 96.

(2) Under the restrictive and mandatory provisions of this and the first section of this article, the General Assembly cannot, by a special act, confer additional powers on a corporation already existing; and in the purview and application of the provisions of these sections, there is no distinction between private and municipal corporations. *State v. Cincinnati*, 20 Ohio St., 18.

The act of April 16, 1870 (67 O. L., 141), "to prescribe the corporate limits of Cincinnati," is a special act. It assumes to confer upon the corporation of that city additional powers; to confer, on certain condi-

tions, the power of municipal government, the power of police regulation, the power of judicial jurisdiction, and of assessment and taxation, over a number of outlying incorporated suburban villages and other territory not before within the limits of the city; and is therefore repugnant to the Constitution, and of no binding force and validity. *Ib.*

(3) It is well settled in this state, by repeated adjudications, that, independent of constitutional prohibitions, it is within the legitimate scope of legislative power to authorize a city to aid in the construction of railroads or other public improvements in which such city has a special interest, and to impose taxes upon its citizens for that purpose. *Walker v. Cincinnati*, 21 Ohio St., 14; and see numerous authorities there cited.

It follows that it is equally competent for the Legislature to authorize the entire construction of such improvements by a city having a special interest therein, and to empower the local authorities to provide means therefor by the taxation of its citizens. *Ib.*

Where the authority given is to construct a line of railroad, having one of its termini in such city, it does not affect the question of power, that the road when constructed will lie mainly outside of the State of Ohio. It is the corporate interest of the municipality which determines her right of taxation, and not the location of the road, which may well be constructed with the consent of the state into or through which it may pass. *Ib.*

Taxation can only be authorized for public purposes. Where, therefore, a statute authorizes a county, township or municipality to levy taxes not above a given per cent. on the taxable property of the locality, for the purpose of building so much of a railroad as can be built for that amount, and the part of a railroad to be built can be of no public utility unless used to accomplish an unconstitutional purpose, such tax is illegal, and cannot be imposed. *Taylor v. Com. of Ross Co.*, 22 Ohio St.

(4) Difference between "taxes" and "assessments." The former are levied for general public purposes, upon all alike; and are compensated for by the equal protection of government afforded to all. The latter are laid for local purposes, upon local objects, and are recompensed in local benefits and improvements. *Ridenour v. Saffin*, 1 Handy's Rep., 464.

"An assessment is doubtless a tax; but the term implies something more; it implies a tax of a particular kind, predicated upon the principle of equivalents or benefits, which are peculiar to the person or property charged therewith, and which are said to be assessed or appraised according to the measure or proportion of such equivalents. Whereas, a simple tax is imposed for the purpose of supporting the government generally, without reference to any special advantage, which may be supposed to accrue to the persons taxed. Taxes must be levied without discrimination, equally upon all the subjects of property, whilst assessments are only levied upon lands, or some other specific property, the subject of the supposed benefits, to repay which the assessment is levied." *Ib.*, 473—Spencer, J.

"The Constitution did not intend of itself to regulate the manner of levying assessments, any more than to prescribe the limits thereof,

but has wisely left the whole matter to legislative discretion, to be exercised as circumstances should from time to time justify." *Ib.*, 475.

Legislation authorizing cities and villages to levy special assessments for the purpose of improving streets, upon real property peculiarly and specially benefited, is not repugnant to the Constitution. And such assessment may be made upon property abutting on such streets, in proportion to the number of feet front abutting thereon. *Ridenour v. Saffin*, 1 Handy's Rep., 464; *Bonsall v. Lebanon*, 19 Ohio, 418; *Scovill v. Cleveland*, 1 Ohio St., 126; *Hill v. Higdon*, 5 Ohio St., 243; *Marion v. Epler*, *Ib.*, 250; *Ernst v. Kunkle*, *Ib.*, 520; *Reeves v. Treas. of Wood Co.*, 8 Ohio St., 333; *Foster v. Com. of Wood Co.*, 9 Ohio St., 540; *N. I. R. R. Co. v. Connelly*, 10 Ohio St., 159; *Maloy v. Marietta*, 11 Ohio St., 636; *Creighton v. Scott*, 14 Ohio St., 438; *State v. Com. of Warren Co.*, 17 Ohio St., 558.

Such assessment may be levied by the acre. *Foster v. Com. of Wood Co.*, 9 Ohio St., 540.

Such assessment need not be levied upon all lands on such street, but only on those bounding upon the improvement or near thereto. *Scovill v. Cleveland*, 1 Ohio St., 127.

The assessment, whether by the front foot or upon the value assessed for taxation, must be uniform, operating alike upon all the lots or lands abutting upon the improvement, and the fact that one or more of the tracts may not have been benefited by the improvement, will not render such assessment invalid. *N. I. R. R. Co. v. Connelly*, 10 Ohio St., 159.

Lands appropriated by a railroad company for its track through a city, and crossing the improved street at right angles, and upon which the track was constructed after the work had been completed, is liable to such assessment. And as between the railroad company and the person performing the work (whatever may be the rights of bona fide mortgagees of said railroad), the lands so appropriated may be sold to pay said assessment. *Ib.*

The power to authorize assessments as distinguished from taxes proper, is comprehended in the general grant of legislative power to the General Assembly. *Reeves v. Treas. of Wood Co.*, 8 Ohio St., 333; *Baker v. Cincinnati*, 11 Ohio St., 534.

The power to authorize assessments for the construction of free turnpike roads, and the opening of drains, as well as for the improvement of streets and sidewalks, exists to the same extent under the present Constitution as under that of 1802. *Reeves v. Treas. of Wood Co.*, 8 Ohio St., 333.

(5) The authority and duty to prevent an abuse of the powers of taxation and assessment by municipal corporations, is intrusted by this section of the Constitution to the General Assembly, and not to the courts of the state. And the power of the Legislature to authorize local taxation cannot be judicially denied on the ground that the purpose for which it is exercised is not local, unless the absence of all special local interest is clearly apparent. *Walker v. Cincinnati*, 21 Ohio St., 14.

This section relates exclusively to cities and villages, and can have

no application to counties or county commissioners. *State v. Com. of Warren Co.*, 17 Ohio St., 561.

1 Debates, 260, 447, 458. 2 Debates, 668, 676, 838, 851, 863, 864, 870.

Associa-
tions with
banking
powers.

SEC. 7. No act of the general assembly, authorizing associations with banking powers, shall take effect until it shall be submitted to the people, at the general election next succeeding the passage thereof, and be approved by a majority of all the electors, voting at such election.

This section, as well as the second and third, is prospective, and not retrospective, in its intent and application. *Citizens' Bank v. Wright*, 6 Ohio St., 318; *State v. Roosa*, 11 Ohio St., 17.

1 Debates, 707, 709; 2 Debates, 20, 344-346, 392-396, 402-424, 795-803, 806, 819, 820, 824, 850, 851, 864, 870.

ARTICLE XIV.

JURISPRUDENCE.

Commis-
sioners.

SEC. 1. The general assembly, at its first session after the adoption of this constitution, shall provide for the appointment of three commissioners, and prescribe their tenure of office, compensation, and the mode of filling vacancies in said commission.

1 Debates, 338, 551-554; 2 Debates, 331, 838, 864, 870.

Their duties.

SEC. 2. The said commissioners shall revise, reform, simplify and abridge the practice, pleading, forms and proceedings of the courts of record of this state; and, as far as practicable and expedient, shall provide for the abolition of the distinct forms of action at law, now in use, and for the administration of justice by a uniform mode of proceeding, without reference to any distinction between law and equity.

1 Debates, 338, 554-577; 2 Debates, 319-321, 324-326, 331, 838, 864, 870.

Their re-
port.

SEC. 3. The proceedings of the commissioners shall, from time to time, be reported to the general assembly, and be subject to the action of that body.

1 Debates, 338; 2 Debates, 331, 838, 864, 870.

ARTICLE XV.

MISCELLANEOUS.

Seat of gov-
ernment.

SEC. 1. Columbus shall be the seat of government, until otherwise directed by law. (*See Const. 1802, Art. VII, § 4.*)

1 Debates, 164, 259; 2 Debates, 318, 568, 633, 664, 854, 864, 870.

Public print-
ing.

SEC. 2. The printing of the laws, journals, bills, legislative documents and papers for each branch of the general assembly, with the printing required for the executive and other departments of state, shall be let, on contract, to the

lowest responsible bidder, by such executive officers, and in such manner, as shall be prescribed by law.

1 Debates, 163, 230; 2 Debates, 318, 560, 582-589, 632, 633, 664, 854, 864, 870.

SEC. 3. An accurate and detailed statement of the receipts and expenditures of the public money, the several amounts paid, to whom, and on what account, shall, from time to time, be published, as shall be prescribed by law.

Receipts and expenditures.

1 Debates, 163, 237-239; 2 Debates, 151, 318, 564-566, 633, 664, 854, 864, 870.

SEC. 4. No person shall be elected or appointed to any office in this state, unless he possess the qualifications of an elector.

Who eligible to office.

See Art. V.

1 Debates, 163, 258; 2 Debates, 318, 567, 633, 664, 854, 864, 870.

SEC. 5. No person who shall hereafter fight a duel, assist in the same as second, or send, accept, or knowingly carry, a challenge therefor, shall hold any office in this state.

Duelists ineligible.

1 Debates, 164, 260-263; 2 Debates, 165, 318, 569, 578, 590, 633, 664, 854, 864, 870.

SEC. 6. Lotteries, and the sale of lottery tickets, for any purpose whatever, shall forever be prohibited in this state.

Lotteries.

1 Debates, 164, 263; 2 Debates, 318, 569, 633, 664, 854, 864, 870.

SEC. 7. Every person chosen or appointed to any office under this state, before entering upon the discharge of its duties, shall take an oath or affirmation, to support the constitution of the United States, and of this state, and also an oath of office. (*See Const. 1802, Art. VII, § 1.*)

Oath of officers.

All officers should take the oath required by the Constitution, whether the law, under which they hold office, prescribe this duty or not. The injunctions of the Constitution in this respect are as obligatory as those of a statute could be. *State v. Kennon*, 7 Ohio St., 546-558—Brinkerhoff, J.

1 Debates, 163, 293; 2 Debates, 318, 634, 664, 854, 864, 870.

SEC. 8. There may be established, in the secretary of state's office, a bureau of statistics, under such regulations as may be prescribed by law.

Bureau of statistics.

2 Debates, 293, 755, 756, 854, 864, 870.

ARTICLE XVI.

AMENDMENTS.

SEC. 1. Either branch of the general assembly may propose amendments to this constitution; and, if the same shall be agreed to, by three-fifths of the members elected to each house, such proposed amendments shall be entered on the journals, with the yeas and nays, and shall be published in at least one newspaper in each county of the state, where a newspaper is published, for six months preceding the next election for senators and representatives, at which time the

This constitution may be amended, and how.

same shall be submitted to the electors, for their approval or rejection; and if a majority of the electors, voting at such election, shall adopt such amendments, the same shall become a part of the constitution. When more than one amendment shall be submitted at the same time, they shall be so submitted, as to enable the electors to vote on each amendment, separately.

2 Debates, 339, 427, 428, 434, 436, 446, 811, 839, 864, 870.

Same subject.

SEC. 2. Whenever two-thirds of the members elected to each branch of the general assembly, shall think it necessary to call a convention, to revise, amend, or change this constitution, they shall recommend to the electors to vote, at the next election of members to the general assembly, for or against a convention; and if a majority of all the electors, voting at said election, shall have voted for a convention, the general assembly shall, at their next session, provide, by law, for calling the same. The convention shall consist of as many members as the house of representatives, who shall be chosen in the same manner, and shall meet within three months after their election, for the purpose aforesaid. (*See Const. 1802, Art. VII, § 5.*)

2 Debates, 339, 428, 429, 434, 436, 446, 811, 839, 864, 870.

Same subject.

SEC. 3. At the general election, to be held in the year one thousand eight hundred and seventy-one, and in each twentieth year thereafter, the question: "Shall there be a convention to revise, alter, or amend the constitution," shall be submitted to the electors of the state; and, in case a majority of all the electors, voting at such election, shall decide in favor of a convention, the general assembly, at its next session, shall provide, by law, for the election of delegates, and the assembling of such convention, as is provided in the preceding section; but no amendment of this constitution, agreed upon by any convention assembled in pursuance of this article, shall take effect, until the same shall have been submitted to the electors of the state, and adopted by a majority of those voting thereon.

2 Debates, 339, 429-436, 446, 811, 839, 864, 870.

SCHEDULE.

Of prior laws.

SECTION 1. All laws of this state, in force on the first day of September, one thousand eight hundred and fifty-one, not inconsistent with this constitution, shall continue in force, until amended or repealed. (*See Const. 1802, Sched., § 4.*)

The laws of a conquered country being held to remain in force until repealed, so far as they are consistent with the government of the conquerors, *a fortiori* must it be held, that the laws of a state survive a peaceable change of its constitution, effected by its own people, and not varying the general structure of the government, to the full extent to which they are consistent with the new order of things. *Cass v. Dillon*, 2 Ohio St., 607.

The new constitution of Ohio created no new state. It only altered, in some respects, the fundamental law of a state already in existence; and even this was done pursuant to the prior constitution, under whose provisions the convention was called, and the new constitution framed. *Ib.*

It follows, that all laws in force when the latter took effect, and which were not inconsistent with it, would have remained in force without an express provision to that effect; and all inconsistent laws fell simply because they were inconsistent; in other words, all repugnant laws were repealed by implication. *Ib.*

The rule, that repeals by implication are not favored, is applicable to the inquiry, whether any particular enactment has ceased to be in force on account of repugnancy to the new constitution. *Ib.*; *State v. Dudley*, 1 Ohio St., 437.

The repugnancy which must cause the law to fall, must be necessary and obvious; if by any fair course of reasoning, the law and the Constitution can be reconciled, the law must stand. *C. W. & Z. R. R. Co. v. Com. of Clinton Co.*, 1 Ohio St., 77; *State v. Dudley*, *Ib.* 437; *Cass v. Dillon*, 2 Ohio St., 608; *Hill v. Higdon*, 5 Ohio St., 243; *Armstrong v. Treas. of Athens Co.*, 10 Ohio, 235; *Goshorn v. Purcell*, 11 Ohio St., 653. And see Art. IV, § 1, note 1.

The English common law, so far as it is reasonable in itself, suitable to the condition and business of our people, and consistent with the letter and spirit of our federal and state constitutions and statutes, has been and is followed by our courts, and may be said to constitute a part of the common law of Ohio. But wherever it has been found wanting in either of these requisites, our courts have not hesitated to modify it to suit our circumstances, or, if necessary, wholly to depart from it. *Bloom v. Richards*, 2 Ohio St., 387.

2 Debates, 804, 818, 819, 844, 847, 864, 870.

SEC. 2. The first election for members of the general assembly, under this constitution, shall be held on the second Tuesday of October, one thousand eight hundred and fifty-one.

2 Debates, 804, 817-819, 844, 847, 864, 870.

SEC. 3. The first election for governor, lieutenant governor, auditor, treasurer, and secretary of state and attorney general, shall be held on the second Tuesday of October, one thousand eight hundred and fifty-one. The persons, holding said offices on the first day of September, one thousand eight hundred and fifty-one, shall continue therein, until the second Monday of January, one thousand eight hundred and fifty-two.

2 Debates, 804, 817-819, 843, 844, 847, 864, 870.

SEC. 4. The first election for judges of the supreme court, courts of common pleas, and probate courts, and clerks of the courts of common pleas, shall be held on the second Tuesday of October, one thousand eight hundred and fifty-one, and the official term of said judges and clerks, so elected, shall commence on the second Monday of February, one thousand eight hundred and fifty-two. Judges and

The first election for members of general assembly.

For state officers.

For judges, clerks, etc.

clerks of the courts of common pleas and supreme court, in office on the first day of September, one thousand eight hundred and fifty-one, shall continue in office with their present powers and duties, until the second Monday of February, one thousand eight hundred and fifty-two. No suit or proceeding, pending in any of the courts of this state, shall be affected by the adoption of this constitution.

See Art. IV, § 7, Note 2; § 13, Note.

2 Debates, 804, 817-819, 844, 847, 864, 870.

What officers to continue in office until the expiration of their term.

SEC. 5. The register and receiver of the land office, directors of the penitentiary, directors of the benevolent institutions of the state, the state librarian, and all other officers, not otherwise provided for in this constitution, in office on the first day of September, one thousand eight hundred and fifty-one, shall continue in office, until their terms expire, respectively, unless the general assembly shall otherwise provide.

2 Debates, 804, 817-819, 844, 847, 864, 865, 870.

As to certain courts.

SEC. 6. The superior and commercial courts of Cincinnati, and the superior court of Cleveland, shall remain, until otherwise provided by law, with their present powers and jurisdiction; and the judges and clerks of said courts, in office on the first day of September, one thousand eight hundred and fifty-one, shall continue in office, until the expiration of their terms of office, respectively, or, until otherwise provided by law; but neither of said courts shall continue after the second Monday of February, one thousand eight hundred and fifty-three; and no suits shall be commenced in said two first mentioned courts, after the second Monday of February, one thousand eight hundred and fifty-two, nor in said last mentioned court, after the second Monday in August, one thousand eight hundred and fifty-two; and all business in either of said courts, not disposed of within the time limited for their continuance as aforesaid, shall be transferred to the court of common pleas.

2 Debates, 804, 818, 819, 844, 847, 865, 870.

County and township officers.

SEC. 7. All county and township officers and justices of the peace, in office on the first day of September, one thousand eight hundred and fifty-one, shall continue in office until their terms expire, respectively.

2 Debates, 804, 818, 819, 844, 847, 865, 870.

Vacancies.

SEC. 8. Vacancies in office, occurring after the first day of September, one thousand eight hundred and fifty-one, shall be filled, as is now prescribed by law, and until officers are elected or appointed, and qualified, under this constitution.

2 Debates, 804, 817-819, 844, 847, 865, 870.

When constitution shall take effect.

SEC. 9. This constitution shall take effect, on the first day of September, one thousand eight hundred and fifty-one.

"The Constitution must receive the same construction since its ratification by the people that it would have received when it passed from the hands of the Convention. As a necessary result from this principle, things as they existed on the tenth of March, when it was adopted

by the Convention, must control in its construction. In short, the instrument speaks from the tenth of March, although by its own terms, its effect was postponed to the first of September, and none the less so because the approval of the people was made necessary to its ultimate effect. They but ratified and approved an act already done by their representatives in convention, and were not, in any correct sense, the authors of the act itself." *State v. Dudley*, 1 Ohio St., 437-442—Ranney, J.

2 Debates, 804, 818, 819, 844, 847, 865, 870.

SEC. 10. All officers shall continue in office, until their successors shall be chosen and qualified. (*See Const.* 1802, *Sched.* § 3.)

Term of office.

This section was not intended as a permanent provision of the Constitution, and as such applicable to officers chosen under it, but was limited, in its application, to officers chosen or appointed under the old Constitution and whose term of office did not expire, until after the taking effect of the new Constitution. *State v. Taylor*, 15 Ohio St., 137.

2 Debates, 804, 818, 819, 844, 847, 865, 870.

SEC. 11. Suits pending in the supreme court in bank, shall be transferred to the supreme court provided for in this constitution, and be proceeded in according to law.

Transfer of suits.

2 Debates, 804, 818, 819, 844, 847, 865, 870.

SEC. 12. The district courts shall, in their respective counties, be the successors of the present supreme court; and all suits, prosecutions, judgments, records and proceedings, pending and remaining in said supreme court, in the several counties of any district, shall be transferred to the respective district courts of such counties, and be proceeded in, as though no change had been made in said supreme court.

Same subject.

2 Debates, 804, 817-819, 844, 847, 865, 870.

SEC. 13. The said courts of common pleas, shall be the successors of the present courts of common pleas in the several counties, except as to probate jurisdiction; and all suits, prosecutions, proceedings, records and judgments, pending or being in said last mentioned courts, except as aforesaid, shall be transferred to the courts of common pleas created by this constitution, and proceeded in, as though the same had been therein instituted.

Same subject.

2 Debates, 804, 818, 819, 844, 847, 865, 870.

SEC. 14. The probate courts provided for in this constitution, as to all matters within the jurisdiction conferred upon said courts, shall be the successors, in the several counties, of the present courts of common pleas; and the records, files and papers, business and proceedings, appertaining to said jurisdiction, shall be transferred to said courts of probate, and be there proceeded in, according to law.

Same subject.

2 Debates, 804, 817-819, 844, 847, 865, 870.

Judges and
clerks, how
elected, etc.

SEC. 15. Until otherwise provided by law, elections for judges and clerks shall be held, and the poll books returned, as is provided for governor, and the abstract therefrom, certified to the secretary of state, shall be by him opened, in the presence of the governor, who shall declare the result, and issue commissions to the persons elected.

2 Debates, 844, 847, 865, 870.

Election re-
turns, where
sent.

SEC. 16. Where two or more counties are joined in a senatorial, representative, or judicial district, the returns of elections shall be sent to the county, having the largest population.

2 Debates, 782, 847, 865, 870.

Constitution
submitted to
the electors
of the state,
etc.

SEC. 17. The foregoing constitution shall be submitted to the electors of the state, at an election to be held on the third Tuesday of June, one thousand eight hundred and fifty-one, in the several election districts of this state. The ballots at such election shall be written or printed as follows: Those in favor of the constitution, "New Constitution, Yes;" those against the constitution, "New Constitution, No." The polls at said election shall be opened between the hours of eight and ten o'clock A. M., and closed at six o'clock P. M.; and the said election shall be conducted, and the returns thereof made and certified, to the secretary of state, as provided by law for annual elections of state and county officers. Within twenty days after such election, the secretary of state shall open the returns thereof, in the presence of the governor; and, if it shall appear that a majority of all the votes, cast at such election, are in favor of the constitution, the governor shall issue his proclamation, stating that fact, and said constitution shall be the constitution of the state of Ohio, and not otherwise.

The results of this election, excluding the returns of two counties, Defiance and Auglaize, which were not received in the twenty days specified, were as follows:

"New Constitution, Yes,"	125,564
"New Constitution, No,"	109,276

Majority for New Constitution 16,288

2 Debates, 805, 813-815, 819, 824, 844, 847, 848, 865, 870.

License to
traffic in in-
toxicating
liquor.

SEC. 18. At the time when the votes of the electors shall be taken for the adoption or rejection of this constitution, the additional section, in the words following, to wit: "No license to traffic in intoxicating liquors shall hereafter be granted in this state; but the general assembly may, by law, provide against evils resulting therefrom," (1) shall be separately submitted to the electors for adoption or rejection, in form following, to wit: A separate ballot may be given by every elector and deposited in a separate box. Upon the ballots given for said separate amendment shall be written or printed, or partly written and partly printed, the words: "License to sell intoxicating liquors, Yes;" and

upon the ballots given against said amendment, in like manner, the words: "License to sell intoxicating liquors, No." If, at the said election, a majority of all the votes given for and against said amendment, shall contain the words: "License to sell intoxicating liquors, No," then the said amendment shall be a separate section of article fifteen of the constitution. (2)

(1) This clause expressly authorized §§ 1, 2, 4, 8, of the act of May 1, 1854 (S. & C., 1431), "to provide against the evils resulting from the sale of intoxicating liquors in the State of Ohio." *Miller v. State*, 3 Ohio St., 475.

(2) This election resulted :
"License to sell intoxicating liquors, No," 113,239
"License to sell intoxicating liquors, Yes," 104,255

Majority for No License..... 8,984

2 Debates, 362, 436-461, 694, 695, 711-723, 726, 788, 789, 793, 805, 848, 865, 870.

SEC. 19. The apportionment for the house of representatives, during the first decennial period under this constitution, shall be as follows :

Apportionment for house of representatives.

The counties of Adams, Allen, Athens, Auglaize, Carroll, Champaign, Clark, Clinton, Crawford, Darke, Delaware, Erie, Fayette, Gallia, Geauga, Greene, Hancock, Harrison, Hocking, Holmes, Lake, Lawrence, Logan, Madison, Marion, Meigs, Morrow, Perry, Pickaway, Pike, Preble, Sandusky, Scioto, Shelby and Union, shall, severally, be entitled to one representative, in each session of the decennial period.

The counties of Franklin, Licking, Montgomery and Stark, shall each be entitled to two representatives, in each session of the decennial period.

The counties of Ashland, Coshocton, Highland, Huron, Lorain, Mahoning, Medina, Miami, Portage, Seneca, Summit and Warren, shall, severally, be entitled to one representative, in each session ; and one additional representative, in the fifth session of the decennial period.

The counties of Ashtabula, Brown, Butler, Clermont, Fairfield, Guernsey, Jefferson, Knox, Monroe, Morgan, Richland, Trumbull, Tuscarawas and Washington, shall, severally, be entitled to one representative, in each session ; and two additional representatives, one in the third, and one in the fourth session of the decennial period.

The counties of Belmont, Columbiana, Ross and Wayne, shall, severally, be entitled to one representative, in each session ; and three additional representatives, one in the first, one in the second, and one in the third session of the decennial period.

The county of Muskingum shall be entitled to two representatives, in each session ; and one additional representative, in the fifth session of the decennial period.

The county of Cuyahoga shall be entitled to two representatives, in each session ; and two additional representa-

tives, one in the third, and one in the fourth session of the decennial period.

The county of Hamilton shall be entitled to seven representatives, in each session; and four additional representatives, one in the first, one in the second, one in the third, and one in the fourth session, of the decennial period.

The following counties, until they shall have acquired a sufficient population to entitle them to elect, separately, under the fourth section of the eleventh article, shall form districts in manner following, to wit: The counties of Jackson and Vinton, one district; the counties of Lucas and Fulton, one district; the counties of Wyandot and Hardin, one district; the counties of Mercer and Van Wert, one district; the counties of Paulding, Defiance and Williams, one district; the counties of Putnam and Henry, one district; and the counties of Wood and Ottawa, one district: each of which districts shall be entitled to one representative, in every session of the decennial period.

1 Debates, 460; 2 Debates, 7, 708, 782, 783, 822, 823, 848, 865, 866, 870.

Done in convention, at Cincinnati, the tenth day of March, (1) in the year of our Lord, one thousand eight hundred and fifty-one, and of the independence of the United States, the seventy-fifth.

(1) See Sched., § 9, Note.

WILLIAM MEDILL, *President.*

Attest: WM. H. GILL, *Secretary.*

S. J. ANDREWS,
WILLIAM BARBEE,
JOSEPH BARNETT,
DAVID BARNET,
WM. S. BATES,
A. I. BENNETT,
JOHN H. BLAIR,
JACOB BLICKENSDECKER,
VAN BROWN,
R. W. CAHILL,
L. CASE,
DAVID CHAMBERS,
JOHN CHANY,
H. D. CLARK,
GEORGE COLLINS,
FRIEND COOK,
OTWAY CURRY,
G. VOLNEY DORSEY,
THOS. W. EWART,
JOHN EWING,
JOSEPH M. FARR,
ELIAS FLORENCE,
ROBERT FORBES,
H. N. GILLET,
JOHN GRAHAM,

JACOB J. GREENE,
JOHN L. GREEN,
HENRY H. GREGG,
W. S. GROESBECK,
C. S. HAMILTON,
D. D. T. HARD,
A. HARLAN,
WILLIAM HAWKINS,
JAMES P. HENDERSON,
PETER HITCHCOCK,
J. McCORMICK,
G. W. HOLMES,
GEO. B. HOLT,
JOHN J. HOOTMAN,
V. B. HORTON,
SAMUEL HUMPHREVILLE,
JOHN E. HUNT,
B. B. HUNTER,
JOHN JOHNSON,
J. DAN. JONES,
JAMES B. KING,
S. J. KIRKWOOD,
THOS. J. LARSH,
WILLIAM LAWRENCE,
JOHN LARWILL,

ROBERT LEECH,
D. P. LEADBETTER,
JOHN LIDEY,
JAMES LOUDON,
H. S. MANON,
SAMSON MASON,
MATTHEW H. MITCHELL,
ISAIAH MORRIS,
CHARLES MCCLOUD,
S. F. NORRIS,
CHAS. J. ORTON,
W. S. C. OTIS,
THOMAS PATTERSON,
DANL. PECK,
JACOB PERKINS,
SAML. QUIGLEY,
R. P. RANNEY,
CHS. REEMELIN,
ADAM N. RIDDLE,
EDWARD C. ROLL,
WM. SAWYER,
SABIRT SCOTT,
JOHN SELLERS,
JOHN A. SMITH,
GEORGE J. SMITH,
B. P. SMITH,

HENRY STANBERY,
B. STANTON,
ALBERT V. STEBBINS,
E. T. STICKNEY,
HARMAN STIDGER,
JAMES STRUBLE,
J. R. SWAN,
L. SWIFT,
JAMES W. TAYLOR,
NORTON S. TOWNSHEND,
ELIJAH VANCE,
WM. M. WARREN,
THOMAS A. WAY,
J. MILTON WILLIAMS,
ELSEY WILSON,
JAS. T. WORTHINGTON,
E. B. WOODBURY,
H. C. GRAY,
EDWARD ARCHBOLD,
REUBEN HITCHCOCK,
F. CASE,
JOSEPH VANCE,
RICH'D STILLWELL,
SIMEON NASH,
HUGH THOMPSON,
JOSEPH THOMPSON.

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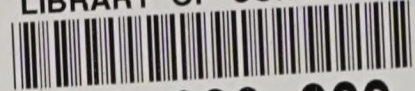
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none incompetent on account of religious belief	1	7	40
right of, accused to meet face to face	1	10	43
WORSHIP—			
all persons may as conscience dictates	1	7	40
none compelled to support	1	7	40
YEAS AND NAYS—			
to be entered on journal	2	9	59
taken on appointments to office	7	2	90
on amendments to Constitution	16	1	117

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